United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

MRICINAL

74-2215

In The

United States Court of Appeals
For The Second Circuit

NORI SINOTO,

Appellant,

vs.

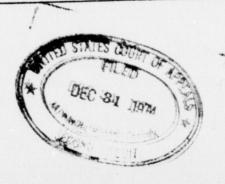
DEVCO MANAGEMENT and DEIGHTON O. EDWARDS,

Appellees.

On Appeal from the United States District Court for the Southern District of New York.

APPELLANT'S APPENDIX

Butowsky, Schwenke & Devine Attorneys for Appellant 230 Park Avenue New York, New York 10017 (212) 725-5360



PAGINATION AS IN ORIGINAL COPY

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CALL BOCKET

DOCKET ENTRIES

Jury demand dese:

8.30-79

TIT. " OF CASE lutou k., Chuanco è Pevine 230 Bais e ve. For plaintiff: For defendant: Marvin I. Edelstein 55 Liberty St. NYC 10005 732 963 STATISTICAL RECORD RECEIL T NO. ----5 m ded Clerk 5 mailed Marchal. of Action: Docket for A TRUE COP la White-s fees en agole at:

"lod pltff's notice to toke deposition of Deighton O. Edwards on 3-2-73.
Filed surmons and encorad affirmation of service on Devco Management, Inc. by Robert J. Ficol on 1-4-73. Tilled Tittelle Latte to Problet documents nothingble 3/2 /73,3:30 r.... rar.1,73 Filed Phtff's Notice of Esposition of Franklin National Eank. Issued Subrosna. er.14.73 Filed Fitff's Stip & Order Respliti's decosition of Deft. Deighton O. Edards, Jr. is adjou from 3/2/73 to 3/21/70,10:30 A.M. Knapp, J. 27.32,73 Filed Notice of motion: Ret. May 11, 73, at 2 p.m. Room 619, Retfor inspection and copying by pltf.__ Granted On consent, to the extent indicated in report of Forold J. Raby, U.S. Magistrate. Etc. WAPP.J.

willed pitter's notice of motion restriking answers of defts etc.

ret: 6-19-73. un. 20,73: Filad MENO END. on motion filed Jun. 8,73: Motion denied on condition flut whichin 10 days cofts, pay plaintiff the sum of \$730.20, and fully comply with the previous order of this Goust in relation to discovery, otherwise ug.3-73 Filed Memorendum: The matter is again referred to Magistrate Raby, with the request that he supervise the completion of discovery a report to me on Sepa. 10th whether or not in his opinion defts, have in good faith complied with all proper requests & demands, of pitff. On or after Sept. 10th the pitff, may apply for . with the provious or lan of this Court in relation to discovery. Otherwise ____ compensation for the expenses occasioned by the deft's delay. So ordered. Knapp, J. m/n

12.29-73 Filed consent & proposed protrial order. Knapp, J.

25.7-74 Filed pltff's affidavit & notice of motion granting bim a writ of,

attackment against the deft Deves Management ret. 2-15-74.

25.15 7-77 led pltff's nemocarder to support of motion for a writ of attackment. ab. 13-74Filed oltff's trial memoruodum, ar.11-74Before Knapp, J. Nov-Jury trial begun. ar. 12-79Trial continued & core mand . Judge's decision Reserved. All continued a composition of the state of 3.30-74 Filed pltff's notice of appeal to the USCA from order filed 8-1-74. dismissing complaint. Mailed copy to Marvia I. Edelscein. 9.20.74 FILED REPORT OF MAGISTRATE RABY.

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

JUDGE KNAPP

73 CIV. 25

NORI SINOTO,

Spring Spring Plaintiff

Plaintiff

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SUMMONS

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BUTOWSKY, SCHWENKE & DEVINE

objectiff's attorney g. whose address 1.5

230 Park Avenue New York, New York 10017 212 725 5360

on answer to be complaint which is herewith served upon you, within

20 days after service of this

summens upon you, exclusive of the day of service. If you fail to do so, judgment by default will b taken against you for the relief demanded in the complaint.

|8 FOHN LIVING STON Clerk of Court.

18 E.A. BECKER

Deputy Clerk.

Date:

[Seal of Court]

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RETURN ON SERVICE OF WARFT.

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORI SINOTO,

Plaintiff,:

-against
DEVCO MANAGEMENT, INC.,
and DEIGHTON O. EDWARDS, JR.,

Defendant.

Plaintiff, Nori Sinoto, by his attorneys, Butowsky, Schwenke & Devine, for his complaint herein alleges:

- 1. Plaintiff is a citizen of Japan. Defendant Devco
 Management, Inc. ("Devco") is a corporation incorporated under the
 laws of the State of Delaware having its principal place of
 business in the State of New York. Defendant Deighton O. Edwards,
 Jr. ("Edwards") is a citizen of the State of New York. The matter
 in controversy exceeds, exclusive of interest and costs, the sum
 of ten thousand dollars.
- 2. Defendant Devco on or about April 26, 1972, executed and delivered to plaintiff four promissory notes, copies of which are hereto annexed as Exhibit A.
- Defendant Edwards endorsed all of the notes, as shown by Exhibit A.
- 4. Defendants jointly and severally owe to plaintiff the amount of said notes and interest and an attorneys' fee.

WHEREFORE, plaintiff demands judgment against defendants, jointly and severally:

- (a) for the sum of \$50,000.00, the total principal amount of the four promissory notes; plus
- (b) interest at the rate of 7% on note #1 from April 26, 1972 to June 12, 1972; on note #2 from April 26, 1972 to June 30, 1972; on note #3 from April 26, 1972 to July 20, 1972; and on note #4 from April 26, 1972 to August 9, 1972; plus
- (c) post-maturity interest at the rate of 2% per month on note #1 from June 13, 1972 to the date of judgment; on note #2 from July 1,1972 to the date of judgment; or note #3 from July 21 1972 to the date of judgment; and on note #4 from August 10, 1972 to the date of judgment; plus
- (d) an attorneys' fee as prescribed by the promissory notes in a total amount of \$10,000.00;
- (e) together with the costs and disbursements of this action.

BUTOWSKY, SCHWENKE & DEVINE

A member of the firm

Attorneys for Plaintiff

230 Park Avenue

New York, New York 10017

(212) 725-5360

EXHIBIT A TO PLAINTIFF'S COMPLAINT

\$12.500.00		April	- 26,	19 72
Forty-five days	after date	wa	promise	e to pay to
the order of Mozi Sinoto				,
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	5 Columbus Circle.			
This is note No. 1 of a series of 4 notes. Upon de androc endorsers and/or guarantors hereof, held or acquired by holder hereof all or demand. The makers, endorsers and guarantors of this note hereby waive presenting profess, waive trial by jury in any action or proceeding arising on out of, under this note or the indebtedness for which it is given without notice to them, and of hereof from liability hereon in whole or in part. If a petition under any provision filed by or against any maker, endorser or guarantor hereof, then this note and all of hereof shall become immediately due and payable. If this note he not paid when du guarantors agree to pay all costs of collection, including an attempty's fee of 20% shall be added to the amount due under this note and recoverable with the amount the same to the holder thereof it maturity and thereafter shall place the same with tof them, then they agree to pay to said endorser or guarantor all costs of collection able and which shall be added to the amount due under this note and recoverable we payable at the rate of two per cent per month.	ent for payment, demand, notice of or by reason of this note, consent on onsent that no such renewals, exten- of the Bankruptcy Act or any other where existing obligations of every ki- te and if it be placed with an artorn of the amount of this note, which is due under this note. If any endorse an attorney for collection against the including an attorney for the	non-payment and to any tenewals, e sions or patrial p insolvency statute and of each maker tey for collection, is hereby agreed to to or guarantor of maker, makers,	dishonor, prote- xecusions and pa- symmen shall dis- for any relief th- or endorser her- the maker, make be just and reast this note shall p- prior endorsers.	se, and notice of reial payments of scharge, any party reconder shall be rof to the holder res, endorsers and onable and which ave the amount of guarantors or any
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that by july in any action on this note protest and notice thereof.
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NORI SINOTO,

73 Civ. 25

Plaintiff,

-against-

ANSWER

DEVCO MANAGEMENT, INC., and DEIGHTON O. EDWARDS, JR.,

Defendant.

Defendants, Devco Management, Inc. and
Deighton O. Edwards, Jr., by their attorney, Marvin

I. Edelstein, answering the complaint of the plaintiff,
respectfully alleges as follows:

- a belief thereof, the allegation contained in paragraph "1" of the complaint relative to the citizenship of the plaintiff.
- Deny the allegations contained in paragraph
 of the complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

3. This court does not have proper jurisdiction over the parties herein.

FOR A SECOND AFFIRMATIVE DEFENSE

4. The notes forming the cause of action herein were procured by fraud and wilful misrepresentation by the plaintiff to the defendants.

FOR A THIRD AFFIRMATIVE DEFENSE

 The notes herein were given without consideration and are null and void.

FOR A SET-OFF

6. The notes set forth in the complaint hersin were executed and guaranteed and issued to the plaintiff solely as a demand loan to the extent that there is presently due and owing the defendants, jointly and individually, the sum of \$50,000.00, together with interest at 7% from the date of said loan.

MARVIN I. EDELSTEIN
Attorney for Defendants
Office & P. O. Address
55 Liberty Street
New York, New York 10005
732-9656

TO: BUTOWSKY, SCHWENKE & DEVINE, ESQS.
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10017
725-5360
Att.: Michael C. Devine, Esq.

PRE-TRIAL ORDER WITH CONS

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NORI SINOTO,

73 Civ. 25 WK

Plaintiff, :

PROPOSED PRE-TRIAL ORDER

-against-

DEVCO MANAGEMENT, INC. and : DEIGHTON O. EDWARDS, JR..

Defendants.

On October 23, 1973, the attorneys for the parties to this action appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken.

:

- 1. The pleadings were agreed to be deemed amended in accordance with the framing of the issues in this action in paragraph 9 of this pre-trial order.
- 2. The parties agreed that the trial of this action should be based upon this order and upon the pleadings as amended except that the following issues raised by the pleadings are expressly abandoned:
- (a) Defendants' First Affirmative Defense (lack of jurisdiction).

- 3(a). The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues):
 - (1) Plaintiff is a citizen of Japan.
- (2) Devco Management, Inc. ("Devco") is a corporation incorporated under the law of the State of Delaware, and it is a citizen of the State of New York.
- (3) Deighton O. Edwards, Jr. ("Edwards") is a citizen of the State of New York.
- (4) The amount in controversy, exclusive of interests and costs, exceeds \$10,000.
- (5) Edwards' authentic signature appears on the front of the four promissory notes which are plaintiff's exhibits 1,2 3, and 4.
- (6) On or about May 2, 1972, Edwards endorsed on the b the four promissory notes which are plaintiff's exhibits 1,2,3, and 4.
- (7) Edwards' authentic signature appears on the letter dated April 26, 1972, which is plaintiff's exhibit 5.
- (8) On September 13, 1972, the four promissory notes which are plaintiff's exhibits 1,2,3 and 4 were presented by plaintiff, through bank channels, to Devco's bank, in accordance with the terms of the notes.
- (9) On September 13, 1972, Devco's bank refused to pay the promissory notes and formally dishonored them.

- (10) On or about September 18, 1972, plaintiff again demanded of both defendants that they pay the promissory notes, but both refused.
- (11) There has been no payment of any part of any of the promissory notes.
- (12) Plaintiff never has received any compensation (or other consideration) for any services which may have been rendered by him for the benefit of Devco.
 - 3(b). It is the plaintiff's contention that:
- (1) Defendants are jointly and severally liable to him in the principal amount of the four promissory notes which are plaintiff's exhibits 1, 2, 3, and 4, plus interest, plus attorneys fees, plus the costs and disbursements of this action
 - (2) The amounts of plaintiff's damages are as follows
 - (i) \$50,000.00; total principal amount; plus
 - (ii) \$16,380.04; interest to October 31, 1973 (plu:
 interest to date of judgment); plus
 - (iii) \$10,000.00; specified attorneys' fee.
 - 3(c). It is defendants' contention:
- (1) That the notes executed by the defendant, Devco, and guaranteed by the defendant, Edwards, were procured by fraud and misrepresentation on the part of the plaintiff, in that it was expressly understood that the said notes were not to be negotiated nor presented for payment and that the same were executed by the defendants in blank at the insistence of the plaintiff.

- (2) Notwithstanding the fraud and misrepresentation as set forth above, it is the further contention of the defendant that the notes were issued without consideration in that the plaintiff had performed no services for or on behalf of either defendant.
- 4. The exhibits which each party now expects to offer at the trial are as listed below. The parties agree that the documents marked with an asterisk are authentic and may be offere in evidence.
 - (a). To be offered by plaintiff:
 - *(1). Promissory note; dated April 26, 1972, due June 12, 1972, on which Devco Management, Inc is the maker and Nori Sinoto is the payee;
 - *(2). Promissory note, like #1, except due June 30, 1972;
 - *(3). Promissory note, like #1, except due July 20, 1972;
 - *(4). Promissory note, like #1, except due August 9,
 - *(5). Letter of Devco Management, Inc. to Nori Sinoto, April 26, 1972 (signed copy of same letter is marked "5A", with financial statement attached).
 - *(6). Letter of Nori Sinoto to Devco Management, Inc. and Deighton O. Edwards, Jr., September 18, 1972;
 - *(7). Notice of Protest and Certificate of Protest; regarding note #1 (to be marked as one exhibit
 - *(8). Same items as in #7, except regarding note #2;
 - *(9). Same items as in #7, except regarding note #3;
 - *(10). Same items as in #7, except regarding note #4;

- (11). Diary of Nori Sinoto for 1971;
- (12). Diary of Nori Sinoto for 1972;
- (13). Part 1 of a Report entitled "Devco Management Inc. - Proposal for a Major, National Minorit Enterprise";
- (14). Part 2 Appendix of the Report referred to in item 13;
- (15). Diary of Deighton O. Edwards, Jr. for 1972;
- (b). To be offered by defendants:

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- *(A). Certificate of Incorporation of Devco Management, Inc.;
- *(B). Minutes of meetings of board of directors of Devco Management, Inc.;
- *(C). General Ledger of Devco Management, Inc.;
- *(D). Stock transfer ledger of Devco Management, Inc
 - (E). Minutes of meetings of shareholders and board of directors of Aroco Services, Inc.;
 - (F). Stock transfer ledger of Aroco Services, Inc.
 - (G). Letter agreement between Burnett International Inc. and Nori Sinoto (to be subpoensed by defendants).
- 5. The parties agree that the witnesses whom each party now intends to call, along with the specialty of experts to be called, are those listed below. Should any party hereafts decide to call any additional witnesses, prompt notice of their identity shall be given to each other party in writing, setting forth the reason why the witness was not theretofore identified. No witness may be called at trial unless identified as above.

- (a). To be called by plaintiff:
 - (1) plaintiff;
 - (2) Joseph P. McNally; (rebuttal)
 - (3) Carmen Corrado. (rebuttal)
- (b). To be called by defendants:
 - (1) Deighton O. Edwards, Jr.;
 - (2) Walter Winfree;
 - (3) James Savage;
 - (4) Paul L. Moore;
 - (5) Winston Burnette,
- 6. The parties agreed to limit the number of expert witnesses as follows:
- (a). Plaintiff agrees to call no more than one expert witness on the issue of the chronology of completion of the promissory notes;
 - (b). defendants agree to call no expert witnesses.
- 7. The items specified in Paragraph 3(b)(2) above are all of the claims for damages or for other relief asserted by the plaintiff in this action, as of the date of this conference.

- The parties also agreed on the following matters
- Plaintiff at this time expects to require one (a) trial day (including potential rebuttal witnesses); defendants at this time expect to require one trial day.
- 9. The issues to be tried are formulated by the Court (with the consent and agreement of the parties) as follow:
- (1) Did the plaintiff procure the four promissory notes which are plaintiff's exhibits 1, 2, 3, and 4 by fraud upon the defendants; and
- (2) If lack of consideration constitutes a defense to plaintiff's claim, were the promissory notes issued without valid consideration.

New York, N. Y. Dated: October 23, 1973.

SO ORDERED:

CONSENTED TO:

BUTOWSKY, SCHWENKE & DEVINE

Attorneys for Plaintiff

MANIN I. EDELSTEIN, ESQ.

Attorney for Defendants

	TRANSCRIPT OF TRIAL - DATED MARCH II, 1974-Pages I through 22
1	elbr
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	NORI SINOTO, :
6	Plaintiff, :
7	-against- : 73 Civ. 25
8	DEVCO MANAGEMENT, INC., and :
9	DEIGHTON O. EDWARDS, JR.,
10	Defendants.
11	x
12	Before:
13	HON. WHITMAN KNAPP,
14	District Judge
15	New York, March 11, 1974 Room 1105 - 10:00 a.m.
16	APPEARANCES:
17	MICHAEL C. DEVINE, Esq.,
18	Attorney for Plaintiff and
19	MS. BARBARA EDMONDSON, Esq., of Counsel
20	MARVIN EDELSTEIN, Esq.,
21	Attorney for Defendants
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24 25 (Case called.)

THE COURT: I take it the plaintiff just offers the note and then the defendant proceeds with his defense, is that right?

MR. DEVINE: Your Honor, I need to preface that with a couple of comments.

One, we do have some stipulated facts which I would like to offer and some stipulated doucments also which I would like to offer.

We in addition have an expert wintess who is on call and I epxect him any minute. I would put him on as part of the plaintiff's case, so that he will not have to sit and wait through the defendants' case.

THE COURT: He technically would be in rebuttal.

MR. DEVINE: Yes, but I know there is an issue, and I will offer it. I would also offer Mr. Sinoto, the plaintiff, for a very short series of questions, and then rest.

THE COURT: Does the defendant have any comment: it wants to make?

MR. EDELSTEIN: No, except I don't see anything in the pretrial order relative to an expert.

THE COURT: There is an expert listed there.

MR. EDELSTEIN: There are three people listed.

MR. DEVINE: There is also a specific section on experts, where he is identified.

MR. EDELSTEIN: I have no objection, in any event.

MR. DEVINE: Your Honor, the question of documents I guess is what I should take up first. We have premarked the first ten exhibits and they are listed in the pretrial order as Plaintiff's Exhibits 1 through 10. And there are stipulations as to all of those documents, that they are authentic and admissible.

THE COURT: What does the asterisk mean on the stipulation?

MR. DEVINE: That means there are no objections and they can come into evidence. I would like to offer at this time all of those ten exhibits, and I will give them to the clerk.

I think I have them in order -- yes, I do.

I have Exhibits 1 through 10 in order.

We have marked these with cards. They are not the court's normal marking tickets, but I think that they may suffice.

THE COURT: I suppose it is all right.

(Pause.)

THE COURT: Yes, it is all right.

They are in

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2	They don't need to be replaced. Those will be
3	received in evidence Plaintiff's Exhibits 1 through 10.
4	* No objection, I assume.
5	MR. EDELSTEIN: Subject to testimony relative
6	to the validty of the documents, of course.
7	THE COURT: Yes.
8	(Plaintiff's Exhibits 1 through 10 were received
9	in evidence.)
10	MR. DEVINE: In addition, your Honor, we have a
11	stipulated set of facts in the pretrial order. They are
12	Item 3-A in parentheses in the pretrial order, and
13	No. 1 through 12. I would ask that those facts at this
14	time time be made part of the record. I'd be happy to
15	read them in if that is the best way to do it.
16	THE COURT: That is the entire paragraph 3-A?
17	MR. DEVINE: Yes, it is.
18	THE COURT: No, that can be deemed part of the
19	record. It doesn't have to be read.
20	MR. DEVINE: I would call Joseph McNally as the
21	first witness for the plaintiff.
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1	elbr McNally-direct 5
2	JOSEPH P. McNALLY, called as a witness
3	by the plaintiff, being first duly sworn, testified
4	as follows:
5	DIRECT EXAMINATION
6	BY MR. DEVINE:
7	Q Mr. McNally, what is your occupation?
8	A I am an examiner of questioned documents, that
9	is, more commonly known as a handwriting expert.
10	Q Will you state for the Court very briefly your
11	background in this field.
12	A I have been involved in this particular discipline
13	and forensic science since 1942. In 1942 I started off in
14	this particular area in the New York City Police Department,
15	when I was assigned to the Document Section of the New York
16	City Police Department Laboratory.
17	I remained in this particular type of work,
18	document identification, during practically all my time in
19	the Police Department from 1942 until 1972 when I returned wit
20	the rank of captain from the New York City Police Depart-
21	ment.

THE COURT: Did I ever come in contact with you between '42 and '50 when I was in the DA's office?

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THE WITNESS: You may have, sir. There were so many assistants I passed back and forth through.

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From 1972 until the present I have been in private practice as an examiner of questioned documents. I have also been retained as a consultant by the New York City Department of Social Services in the field of handwriting identification. I have been involved in many thousands of cases in which document identification played a part; and as a result of my involvement and my findings in these cases I have been called upon to testify as a document examiner or a document identification expert.

I have testified and have been accepted as qualified in more than a thousand incidents in the grand juries of the various counties of the State of New York and other counties in the metropolitan area, federal grand juries, the many courts of the State of New York, also courts in the Statesof New Jersey, Connecticut, Rhode Island.

I have also testified and been accepted as qualified in the field of document identification in the federal
court system.

THE COURT: Here in this district?

THE WITNESS: In Southern, Eastern and in Northern Districts.

I am a member of several professional societies which deal with this particular forensic discipline.

A member of the American Society of Forensic Sciences.

	elbr McNally-direct 7
	A member of the American Society of Questioned Document
	Examiners, member of the International Association for
	Identification, and a member of the American Society for Test
	ing and Materials.
	THE COURT: Do you challenge his qualifications?
	MR. EDELSTEIN: No, your Honor. I just don't
3	know what the purpose of an expert witness is.
	THE COURT: As I recollect from the pretrial

order, there is some question as to whether these documents were given complete or blank.

NR. EDELSTEIN: Yes, that is an issue.

If that is ...t he is going to testify to, I have no objection.

THE COURT: Is that what he is here for?

MR. DEVINE: Yes, your Honor.

Q Mr. McNally, I show you Plaintiff's Exhibits

1 through 4 which have been received in evidence in this

case and I ask whether you have prior to today examined

those documents.

A I have.

Q Would you describe briefly for the Court the nature of the examination which you made of those documents?

A I examined the area; irticularly in the lower

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right-hand corner where the typwriting Devco, D-e-v-c-o,
Management, Inc. and the words Chief Executive Officer
appear. That particular typewriting appears on all four
of these documents. In the area in between Devco ---

THE COURT: May I see one of those documents.

I take it they are all similar.

THE WITNESS: Yes, sir.

THE COURT: I am looking at Exhibit 1.

A In between the typewriting Devco Management which is on one line and Chief Executive Officer, which is about three-quarters of an inch below and slightly to the right, appears the script signature Deighton O. Edwards. I examined this, using a low power binocular microscope to determine actually the sequence of writing here, whether the typewriting came first or whether the script signature Deighton O. Edwards was there and the typewriting is superimposed upon it.

As a result of my examination and comparison, using the low power binocular microscope I concluded that the writing is in normal sequence, in effect that the typewriting Devco Management, Incorporated and Chief Executive Officer, appeared first and that subsequently the Deighton O. Edwards signature was written, and in areas where the signature or the script writing imposes upon the

the typewriting.

Q Can you state that opinion with reasonable certainty?

A I can.

Q I show you also Plaintiff's Exhibit 5 which has been marked in evidence in this case, and I ask with respect to that document whether prior to today you have made an examination of it.

A I have.

Q Could you state briefly for the Court the nature of your examination of that document?

A Again, the same type of examination was conducted. The area at the lower right where the typewriting Very Truly Yours, and the typewriting Deighton O. Edwards, Jr., Chief Executive Office/now appears, in between these segments of typewriting appears the script signature of Edwards.

An examination of this area using a low powered binocular microscope, upon an examination of this area I determined that the script signature of Edwards was written after the typewriting. In effect, the typewriting first and then the signature of Edwards imposed upon the typewriting.

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Can you state that opinion with reasonable Q tainty?

I can. A

MR. DEVINE: I have no further questions, your or.

THE COURT: Have you opinion whether the rest of th ing on this note was on the same typewriter as Devco agement?

THE WITNESS: Yes. As a collateral, I also mined the typewriting on all four notes and the typeting on Plaintiff's Exhibit 5.

In each instance the typew iting has been done the same machine. It is a foreign type face or a eign manufactured type face, manufactured by an organtion, Ransmayer Rodrian in West Berlin, West Germany.

This particular type face is used on a number machines, one being a domestic machine, a Remington. there are a number of machines, a Hermes, a Fossett, a couple of other machines.

THE COURT: In your opinion, this was all done on same typewriter?

THE WITNESS: That is right.

THE COURT: I suppose you have no opinion as to whether it was all done at the same time?

Thank you, Mr. McNally.

(Witness excused.)

THE COURT: Would it be possible to determine that if it became an issue, whether they were written at the same time?

MR. MC NALLY: I believe it would be, sir.

MR. DEVINE: I call Nori Sinoto.

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NORI SINOTO, the plaintiff herein, called as a witness in his own behalf, having been first. duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Mr. Sinoto, I show you the documents which are marked Plaintiff's Exhibit 1 through 4, the promissory notes, and ask whether you were present when those notes were signed.

Yes. A

Was the typewritten material on those four notes on those notes prior to their being signed?

Yes. A

I show you Plaintiff's Exhibit 5 also, and ask you wnether you were present when that document was signed.

A Yes.

Was the typewritten portion of that document on the Q page prior to the document being signed?

A Yes.

Mr. Sinoto, what is your business, very briefly? Q

My business is advisory services and business coordination.

Are you the plaintiff in this case?

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Yes.

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Q Did there come a time when you met the defendant Deighton Edwards?

The beginning of October, 1971 I met with M. Edwards at his office.

MR. EDELSTEIN: Your Honor, I am goint to object to any testimony prior to the inception of Devco Management Corporation. This corporation was founded and chartered in the State of Delaware on March 16, 1972. Devco is the maker of the note. Edwards is merely a quarantor. He is not a co-maker of the notes. Therefore, I respectfully submit that any evidence or any testimony that may come out predating the date of the formalization of the defendant Devco, is irrelevant and inadmissible, your Honor.

THE COURT: Might it not be material to know the background of the relationship between the parties?

MR. EDELSTEIN: No, because I think it might unduly prejudice my client. think we are here only to determine the validity or the invalidity of a series of notes. And what happened prior to the inception of the date of the maker, is somewhat irrelevant.

THE COURT: You claim, as I understand it, is that these notes are in a sense a forgery.

MR. EDELSTEIN: No; primarily it is our contection

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praying for his success.

THE COURT: What was the date of your introduction:

By Mr. Winfree to Mr. Edwards, he immedia ely began to discuss with me possible development of his cwn business.

And I was involved in the discussion in the development of certain business and projects for Barnett Development International Corporation, Local Services, Inc., Bahamas World Airlines, and a few other organization development; including Devco Investment, Inc., as well as Devco Management, Inc. In other words, my sincere wishes since the beginning of my meeting with Mr. Edwards until today, even today, my sincere wishes since the beginning of my meeting with Mr. Edwards is to assist him personally, no matter what kind of business he will be involved, he will develop then and in the future. And all the time I have been

THE COURT: You have been doing what?

THE WTINESS: Praying for his success. And I hope that he will be very successful in the particular project which he strongly encouraged him to develop, namely major industry for minority groups in the area of Waste Management Project.

Q Did there come a time, Mr. Sinoto, when the concept of Devco, whether it be Devco Development or Devco

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MR. EDELSTEIN: I object to that again, your Honor. There has been no Devco Development mentioned in any of the pleadings herein. We don't know anything about such a company. All we know about is again Devco Management,

the defendant in this suit.

Management, came about.

THE COURT: I don't see that it's prejudicial. We can find out what relevance it has after we get it all in.

I will withdraw the question and reframe it. Did therecome a time when an entity known as Devco became known to you?

Later part of 1971 Mr. Edwards mentioned Devco Investment, Inc. name. And subsequently, some time in January, 1972, I even referred to that name, levco Investment, in my letter addressed to Mr. Lincoln.

Did there come a time when a Devco Management became known to you?

Yes, subsequent to my discussion with Mr. Edwards in January some time --

January of what year?

Excuse me. January, 1972, he introduced me to the new name Devco Management, Inc ..

Q With respect to Devco Management did you have

discussions with Mr. Edwards regarding the nature of the proposed business of that entity?

A Generally speaking, all the discussions were centered around possible development and establishment of major industry for minority groups. However, when we began to talk about development of Devco Management, particular project already came into our discussion which was waste Management Project.

Q Who conceived the idea of Devco Management going into Waste Management Industry?

A Since the beginning, again, my discussion with Mr. Edwards around the beginning of October, 1971, I have been emphasizing the importance to establish a fine project for minority groups, and in the beginning I was naturally trying to explore various projects, such as building and manufacturing for various groups. As a result of my initial stages of exploration for the possible establishment of major minority industry in the United States, I came across the concept or philosophy to develop Waste Management Project in behalf of minority groups in the United States as a major industry.

Q Were meetings held in your office with Mr. Edwards and others regarding the formation and development of Devco Management?

A Since the beginning, again, of my discussions with Mr. Edwards, my advise has been directed towards
Mr. Edwards almost personally, and I didn't almost care what kind name he is putting on the project. And therefore I didn't even know that the sudden exchange from Devco Investment to Devco Management because I wasn't consulted. However, again, I wasn't so concerned about the name of the corporation because my sincere approach to this entire project is to assist Mr. Edwards personally, and that atitude and my sincere thinking never changed. Even at this moment I still hope that Mr. Edwards will be successful with that project.

Q You answered a question other than the question which I asked you. I would like to ask you again my previous question, which is, were meetings held in our office?

A Yes. Quite often the meeting between Mr. Edwards and myself and a few other associates of Mr. Edwards was held in my office.

Q Was it your practice to keep a record, a diary record during 1971 and 1972 of your business activities?

A Yes. It was my practice to keep a rather meticulous record of my meetings and telephone calls and receipt of mail and also a record of outgoing mail, in my diary.

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Not only my diary. What my secretary's diary showed complete records of those meetings.

Q have you ever received any salary or compensation of any from Devco Management?

When I was introduced to Barnett International Corporation Mr. Edwards gave me a note saying that I be properly compensated by Barnett International. At the end of 1971 he requested me to supply with invoice for my work as well as invoice for the disbursement of expenses. I have done so by personally delivering two documents to Mr. Edwards and I received a word from Mr. Edwards that he will personally take care or responsibility for the payment of these items and also he indicated to me that since my association with Mr. Edwards is really a personal one and he wanted to make sure that when he brings in the people he will take care from his -- what shall I say -- share of the business, and if I bring the people I would take care from my share of the business which since the beginning was a 50/50 type arrangement. However, two invoices that I delivered to Mr. -- actually Barnett International through Mr. Edwards, were never paid. I haven't received a penny.

Also I haven't received any compensation promised by Mr. Edwards, not only for the work I have provided, but also expenses.

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Q Mr. Sinoto, we should straighten out the distinction between Barnett International which you have referred to and Devco Management. During that period of ti

were you concerned with Barnett International?

MR. EDELSTEIN: Your Honor, I am going to object again to Barnett International. This is a completely alien corporation to the purpose of our being here today. There's been no tie-in between that and the defendant in this case.

THE COURT: I am aware of that and I assume you will argue that when all the evidence is in. But I don't see that it does any harm.

Q When was it, Mr.Sinoto, that you were involved with Barnett International? Just the name?

A Since the end of September, 1971 to the beginning of January, 1972.

Q When was the time period during which you were involved with Devco Management?

A Devco Management is a concept, as far as I am concerned, and as far as Mr. Edwards considers that is the concept to be developed as a project to develop major industry for minority group, as far as I was concerned it was the same thing as Devco, you say Devco Index nity or any other

name.

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MR. EDELSTEIN: I object to that, your Honor.

It is not responsive.

THE COURT: It tells us what he was concerned about.

Q When did the concept become known as Devco Management?

A Pight after my first meeting with Mr. Edwards, around the beginning of October, 1971, Mr. Edwards began to talk about his concept of organizing his own company.

Sometimes he used different names, such as Aroco Services.

Sometimes he said Sinoto/Edwards, to indicate 50/50 partnership. All of which I have a record.

- When did it come to be called Devco?
- A In the latter part of 1971 he mentioned

 Devco Investment's name. Therefore I immediately used

 Devco in my letter to Mr. Franklin Lincoln.
 - Q Did it come to be called Devco Management?
- A Though I don't recall precisely when it was changed suddenly to Devco Management, but I assume in the month of February, 1972.
- Q Focusing just on Devco Management, the corporation, have you ever received any salary or compensation from that company?

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A No.

MR. DEVINE: I have no further questions, your Honor.

THE COURT: I am puzzled. What was the significance of the expert's testimony?

MR. DEVINE: That the typewriting on the notes appeared on the notes prior to the handwriting.

THE COURT: Just on the signature. What is the significance of that when he can't say whether the body of to note was done before or at the same time?

MR. DEVINE: I think it is some evidence, your nonor.

THE COURT: He said he could have told you whether the body was on it at the same time, but he didn't. Why didn't he?

MR. DEVINE: I think it was because we didn't ask him to do that.

THE COURT: Why didn't you ask him whether the body of the letter was typed at the same time as the signature? Would you please ask him to come back and tell me whether the body of that note was done at the same time as the typing?

MR. DEVINE: Yes, we will.

THE COURT: Because it seems to me that the

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to be much.

Q When the notes were signed on April 26th in the sum of \$50,000, was that for all the work you had done to date, was that for work you had expected to do in the future, or what was it?

A It was for my work up to that point. However, it was as a partial, as I mentioned before, partial compensation, as rementioned before.

- Q That was a partial compensation?
- A Yes.
- Q On april 26, 27, do you knowif Devco maintained an office?
 - A April 26, 1972?
 - Q Yes, the date they signed the note?
- A · I understand he had an office, Devoco also had an office.
 - Q Do you know where?
 - A I think it was a 10 columbus Circle.
- Q Prior thereto they had also used your space, is that correct?
- A Not necessarily. From time to time he came to my office and used my office for meetings.
 - Q Do you know if they had any employees?
 - A Yes, I have one secretary.

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1	elbr	Sinoto-cross	35
2	Q	Not you, Devco Management I am referring	to.
3	A	I am sorry.	
4	. Q	At the time you signed that?	
5	λ	I understand he had a few people.	, /
6	° Q	On or about April 26thw what other clents	were you
7	represent	ing other than Devco?	
8	А	I was representing Major Japanese Computer	Company
9.	at that t	ine?	
10	Q	Who else?	
11	A	And I would have to refer to my records pr	recisely
12	as to whi	ch companies I was representing.	
13		THE COURT: Do you have your records with	you?
4		MR. DEVINE: Yes, your Honor. We have pre	viously
5	marked Mr	. Sinoto's diary for 1971 as Plaintiff's Ex	hibit
6	11, and t	wo volumes for 1972 as Plaintiff's Exhibit	12.
7	They are	both marked 12. You may want to distingui	sh be-
8	tween the	m.	
9		THE COURT: We will mark one 12-A and one	12-В.
0	Have they	been admitted into evidence, has there bee	n a
1	stipulati	on?	
22	•	MR. EDELSTEIN: There has been no stipul.	ation.
3	I have no	objection to them all.	
4		THE COURT: All right. They are received.	

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(Plaintiff's Exhibits 11 and 12-A and 12-B

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were received in evidence.)

THE WITNESS: Maroth Engineering Company, and I am not so certain, but I think I was representing also Fisher & Brothers.

THE COURT: What does Fisher & Brothers do?
THE WITNESS: Trucking organization.

MDH Products Corporation. These are the major corporations that I was representing at that time. However, I was discussing with him other corporations. But I'd like to point out that based on my record and diary that almost every day I have been spending time with Mr. Edwards and his associates.

MR. EDELSTEIN: I move to strike that part out.
THE COURT: Yes. You answered the question.

- Q · So at the time that you were representing

 Devco, you were representing five or six other companies?
 - A Yes, sor.
- Q Were you representing them on a consulting fee basis or ond a contingent fee basis? What was your relationship fee-wise with these companies?

MR. DEVINE: Your Honor, this is totally irrelevant. It may even be privileged since personal business affairs which he may consider to be confidential..

THE COURT: I can see its relevance. I will al

Yes, I had. A

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What was the nature of that conversation? What. did he say to you and what did you say to him?

I told him, briefly instead, that as he also told that we are in need of substantial amount of money and he told me that he is going to arrange cash payment possibly

1	slbr Sinoto-cross 38
2	by going to the National Bank & Trust, by presenting shares
3	of Devco Management, and therefore I said in that case I
4	don't care what kind of arrangement he is going to make,
5	because my relationship is purely between Mr. Edwards and
6	myself, so that if he uses Devco shares in order to obtain
7	the funds, I didnt' have any objection whatsoever, and ever
8	encouraged him to make such arrangement. Then I said of
9	course I can use that kind of income because I have been
0	devoting my time since the beginning of October, 1971.
1	Q You knew at that time that Devco had no assets,
2	isn't that correct?
3	A He told me right after the establishment of
4	Devco Management, Edwards he could use the shares of Devco
5	Management together with the project potential to induce
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	the funds if possible, he repeated to me at that time,
7	possibly from Nassau Bank & Trust

Q So they were going to borrow from Peter to pay Paul, is that your statement?

A I don't know what you mean -MR. DEVINE: Objection.

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THE COURT: Sustained.

MR. DEVINE: Your Honor, at this time could

I suggest that we substitute for Plaintiff's Exhibits 1

through 4 copy of these notes which were marked during the

1	slbr Sinoto-cross 39
2	depositions in the case so that I may have the original
3	notes delivered to Mr. McNally to follow up on your
4	suggestion.
5	THE COURT: Yes. Any objection?
6	MR. EDELSTEIN: I have never seen the original
7	notes, your Honor, if I may.
8	THE COURT: Yes.
9	MR. DEVINE: These are the copies which were
10	previously marked.
11	THE COURT: Do you have any objection to the
12	substitution?
13	
14	MR. EDELSTEIN: No, your Honor. I just wanted to see that these were indeed the notes.
15	
16	Q As a result of your conversation with Mr. Edwards
17	on or about April 26, did he agree to assign certain
	notes to you?
18	A Yes.
19	Q Did you discuss the amount of the notes?
20	A Yes.
21	Q Did you discuss the means of payment of the
22	notes?
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Was it agreed that they were tobe paid in 4

installments?

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Yes.

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2	SIDI		22.000 61035	10
3		A	Yes.	
		Q .	Where were the notes prepared?	
4		A	At my office.	
5		Q	By whom?	
6	1	A	My secretary.	
7		Q	When was the date of signing of Plaintiffs'	
8		A	April 26th.	
9		Q	That was the date?	
10		A	I recall, yes, that is the date.	
11		Q	At that time did Mr. Edwards affix the corpor	r - '
12	ate	seal	1?	
13		A	No.	
14		Q	To the notes?	
15		A	No.	
16		Q	When did he affix the seal?	
17		A	When he signed.	
18			THE COURT: Was there a seal on the notes?	
19			THE WITNESS: Yes.	
20			MR. EDELSTEIN: There is a seal on the lette	er.
21	I do	n't	know whether it is on the notes, really.	
22			MR. DEVINE: I don't know, your Honor. The	
23	lett	er,	Plaintiff's Exhibit 5, is sealed.	
24			THE COURT: I don't recollect seeing that so	2 a l
	-			

on the notes.

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With him, about the development if his major project, namely now Devco Management, he kept saking that he is going to eventually give me written agreement or shares of the company, or any other letter. However, I haven't received anything, and I wanted to have some document indicating that I am entitled for compensation.

Q You had the note itself?

A Yes, but I wanted to make sure that
there is a word. It was compensation or consideration of
your services rendered. I wanted to have that word in the
letter. And he of course agreed to include that word in tha
letter.

Q So he dictated that to you over the telephone, is that correct?

A That is right.

And I) happened to find out the name of Mrs. Selma

Cohen unless he told me.

Q Who is Mrs. Selma Cohen?

A She was in charge of Devco at the Franklin National Bank at thattime.

- Q Did you ever speak to the lady from Franklin Bank?
- A No, I haven't.
 - Q Did you have any discussions after the signing of

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these notes relative to the ability of Devco to make good or them?

MR. DEVINE: I object, your Monor. I don't understand the constant questioning of the ability of the corporation to pay these notes. I know of no defense to notes which is inability to pay.

THE COURT: No, there is no such defense, but his discussion may be relevant to the whole picture. Did you have any discussions like that?

A Yes, Mr. Edwards told me that I can before this date, maturing date of these notes, he was certain that he can obtain the fund from Nassau Bank & Trust Company.

He indicated that he has a friend there and he was certain that he could obtain such a large sum, or rather relatively large sum of cash arrangement with that bank.

THE COURT: In other words, the company didn't have the money to pay then but he hoped it would have the money, he was certain in fact they would have the money by the time these notes came in?

THE WTINESS: Yes, sir.

Q Did Mr. Edwards ever mention to you or state to you that these notes were not to be presented to a bank?

A I had one understanding with Mr. Edwards.

No. 1 -- a couple of understandings. No. 1, that I am going to use these notes in order to obtain the loan from the bank or other financial institutions, which I have tried, it was my understanding with Mr. Edwards that in the event that I am able to obtain the loan and I am not able to pay back that loan, naturally, that the person or company or bank who collateralized -- excuse me -- obtained my note, would naturally present to Mr. Edwards or Devco's bank. And third, that in case that he cannot give me

50 per cent of the company and proper compensation as he has been promising me all along, then naturally I have no choice but present the state of the company and company in the naturally I have no choice but present the state of the company and company in the naturally I have no choice but present the state of the company and company in the naturally I have no choice but present the state of the company and company in the naturally I have no choice but present the state of the company and company in the naturally I have no choice but present the state of the company and company in the naturally I have no choice but present the state of the company in the naturally I have no choice but present the state of the company in the naturally I have no choice but present the state of the company in the company in the state of the company in the state of the company in the company i

Q In other words, your understanding was that these notes were to be used as collateral against another loan to a third party, is that correct?

- A This was requested by Mr. Edwards.
- Q And that did not --
- A No, because there was no funds, enough funds, and he was certain that he was able to obtain the fund, before the maturity date.

He agreed with me to use as collateral.

- Q Did you ever ask Mr. Edwards to obtain a loan on your behalf using some of your assets as collateral?
 - A Yes, I have asked him.

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Q What happened after that?

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he said that he was heavily utilizing his own A resources to obtain his own loan, he was unable to arrange

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for me at that time, personally.

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I note that each of the notes has a different due date. One due June 12th, one June 30th, one July 20th

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and one August 9th. When did you present these notes

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for payment?

presentment, your Honor.

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I haven't presented them _ on the date. A

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MR.DEVINE: There is a stipulated fact as to

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It was September 13th.

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THE WITNESS: Yes.

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Can you tell us why you didn't present them

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at the date due?

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based on my advice, and all along I have been taking his word

All along and even now I believe in his success

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that he will give me 50 per cent of the company he will

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establish. Around June, 9972 he told me that he cannot give

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me that kind of shares and that he offered very, very small

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percentage of the shares of the company and he said, just

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Therefore, I believe that it was a breach of

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our agreement.

take it or leave it.

Then I waited long enough. During that time I received a settlement call from Mr. Edwards' group, a settl ment of this matter, before I presented four notes to the bar. my bank.

THE COURT: You received a settlement?

MR. EDELSTEIN: Objection. I am not sure if I understood what he said, but I am objecting if he is t ing in terms of --

the number of shares he was trying to give me. I had told him that it was just so small and it was a breach of agreement. Then Mr. Edwards said that just take it or leave it, we cannot give you any more. Then I thought it was a breach of our agreement, and I tried to honor my verbal agreement until then.

THE COURT: What was your verbal agreement?

THE WITNESS: That he is going to give me

50 per cent.

THE COURT: You said you were trying to honor your verbal agreement?

THE WITNESS: I tried to honor what he told me, in other words, accept what he had been telling me.

After June, 1972 I was thinking to present these four notes together with the letter immediately to my bank but I waited

THE COURT: I don't see how that is relevant.

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relevance.

MR. EDELSTEIN: I have a witness, your Honor, who, if I understand his claim correctly, is requesting compensation in the amount of \$50,000 from a corporation that was in existence six weeks.

MR. DEVINE: Your Honor, that is simply not so. We are claiming checks of notes. We are not claiming any compensation from this company.

THE COURT: That will go to the reasonableness.

MR. EDELSTEIN: That has been opened by the plaintiff in his direct examination, your Honor.

MR. DEVINE: It has not.

THE COURT: No, I don't think that adds anything to it. He has indicated he was in financial straits and needed this money, which I know is part of your defense.

MR. EDELSTEIN: No further questions of this witness, your Honor.

REDIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Sinoto, you mentioned Simitomi Shoji in your response to Mr. Edwards' questions. Will you tell the Court breifly what that company is and its size?

A They are international trading firm based, at least heaquarters is based in Japan. And their

0	49
1	slbr Sinoto-redirect
2	interest is so diversified that included Wasting Management
3	Project Development. This is the reason I mentioned in
4	relaying to Mr. Edwards question, that Simitomi Shoji
5	was very much interested in Devco Management Project.
6	And the size of the firm, though I don'tknow, they are
7	almost close to the billion dollarsrange.
8	Q Is it one of the three largest conglomerate compar
9	in Japan?
10	A I think it one of possibly seven or ten major
11	Japanese concerns.
12	MR. DEVINE: That is all, your Honor.
13	THE COURT: All right. We will take a brief
14	recess.
15	(Recess.)
16	MR. DEVINE: Your Honor, we have delivered the
17	note back to Mr. McNally and it is my understanding from
18	my associate that he can be here the first thing tomorrow
19	morning if that is consistent with your calendar.
20	THE COURT: Yes.
21	MR. DEVINE: Subject to that testimony, the
22	plaintiff rests.
23	MR. EDELSTEIN: I guess it is premature then

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THE COURT: It is no ver premature to make a motion.

to make any motion to dismiss.

the State of New York.

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Q When did you first meet Mr. Sinoto?

Λ I believe it was somewhere between the months of September and October, 1971.

Q Under what circumstances did you meet him?

Through an introduction from a partner of mine to me at my request. Can I clarify that point?

I asked my partner, Mr. Winfree, along with others that I was desirous of trying to establish a relationship between a black owned business and the Japanese market because of the growth its had in the last couple of years. Through an associate that he knows, which is a lawyer, Mr. Dew, he was advised that Mr. Winoto was at times instrumental in introducing Japanese companies to American businesses. And we entertained that introduction at that time and that was the purpose and the circumstances around my meeting him.

Q You said you had a partner. What was the name of the firm that you had a partner in at that time?

A I was a partner in the firm. I owned 10 per cent of Burnett International Development Corporation.

It is not the same as Winston Burnett Construction Company. Synonymous, but different.

Q How large a block of stock did you own in Burnett International?

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2 that your signature that appears on the bottom?

- A Yes, it is.
- Q And on the reverse side?
- A Yes, it is.
- Q Can you state the circumstances surrounding your execution of that instrument?
 - A With a great deal of embarrassment, I can.

MR. DEVINE: Move to strike that.

THE COURT: Strike the embarrassment.

THE WITNESS: Well, your monor -- okay.

From December or November, I am not clear of the exact time, 1971, I believe it was, Mr. Sinoto had brought to my attention the fact that he was in some financial problem, like many of us; and asked if I could assist through my banking connections, being a bank officer, with the loan that he needed to straighten out his financial problems.

I told him that I felt I had a moral obligation because of the fact that he did render some time to Burnett International and unfortunately I couldn't control the situation and he was not paid, and I said I would try. I contacted three banks in New York, two banks in New Jersey, and one back in the bahamas.

THE COURT: What banks were they?

THE WITNESS: I contacted Freedom National Bank,

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sources.

2 I contacted Franklin National Bank, I contacted First 3 National Bank. I contacted the American Trust Bank which the high officers that was in the Franklin at the same time 4 5 that I was with Mr. McCaughey, was then vice-president 6 in charge of all loans because he had left Franklin nine mont 7 before I did. I asked him and he asked me specifically, 8 what are the kinds of things that I have as recourse. 9 I had actually, I can't tell you other than the fact 10 that he says he has some patent and he has a violin of major value. He said on either one of the two items of 11 12 collateral I could not loan against. I went to the 13 banamas in due course of business through my association with 14 Bahamas World and asked Nassau Bank & Trust of which the 15 president, the chairman, etc., etc. had offered to me a 16 loan to help them out of some business arrangements if I would agree to a contract, however I'd like to borrow 17 money not only for myself but for Mr. Sinoto who was in 18 difficult problems and they knew ofhim because they had 19 met nim through the Bahamas World arrangements, and would lend 20 They told me at that timt that they were 21 some money. 22 in another tight position as far as liquidity and could 23 not loan money and specifically because of the monetary 24 situation in the Bahamas could not lend to foreign

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I told this to Mr. Sinoto, he called me repeatedly, asks me would I loan him some money. I told him I had
no way to loan money, I had a zero balance myself and the
only thing I was surviving on was my consulting for the
Bahamas.

And then he came back and asked me would I try to do something to assist him in raising money because his situation was extremely critical and there was something wrong with his daughter or whatever the problem was. She had been in an accident or something like that. That is right, her car was damaged in an accident. I then suggested that what he try to do is find somebody that he knows that would use his collateral, who knew him well enough to feel comfortable with his collateral, because no outsider would take any value on the violin unless it had an appraisal value from somebody, or no one could make any value on the patents unless the patent had appraisal value, which was a qualified value, and then had a market to be used. He suggested that he would get back to me, and that was the end of the conversation. About, I don't know, a week or two, maybe longer --

THE COURT: Let me interrupt. You said you worked for Franklin Mational Bank?

THE WITNESS: That is right. I was vice

assistant manager in charge of loan and discount department in Long Island and then I became the bank's urban affairs chief operating officer for urban affairs and assistant vice president.

Q Continue.

A Then he got back to me, I'd sayone week, two weeks, three weeks, I don't recall because I was very busy at the time and asked me would I stop and talk with him.

One evening on my way home I did stop and talk with him. He explained to me he had a friend, and he stated the friend was of his same nationality, and if he could help him get something to offer his friend that his friend would advance him some money. I said well, I don't know what I could get you, but I'd be willing to try because I feel that you have done everything you could, no fault of ours, but still you are struggling for money. I then told nim, find out what he wants, I said, but I don't know what I can do. He came back to me and said that the friend could have some notes and if I would sign the notes that he would then be able to present the notes to his friend.

I said wait a minute. Listen, first of all,

I don't want any notes floating around. He said they will

never go anywhere. I said the cannot go to a bank, anywhere.

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I was not fully cognizant of the real ramifications until somewhere in June or July when it suddently hit me what I had done, I had committed a fraud myself, perpetuated a fraud in essence. I then said, well, first of all, for notes to be considered there has to be something behind it.

If I even sign on the notes there is no guarantee that I have the ability to perform because of my own net worth.

he said well, I think he is a very close friend of mine and he wouldn't even look into this. He went into this over and over again. I was very reluctant to do it. I was involved with the fact that he was in difficulty -emotionally and at that time I felt very, very strongly for nim, and even today I still feel strongly, but I am just sorry about the confusion. I said let me see what you are talking about, and I will deal with it. One afternoon about lo'clock, and I was on my way to Washington, he called me and said he was to have this because he was in trouble, would I sign, would I consider issuing some notes. I said, Nori, I don't like the idea. We hungup the phone after some conversation. He called me back no more than 15 or 20 minutes later with this same problem. I said okay, you got to guarantee me that these notes will go nowhere because I have lived a long time in this world, I have made a certain reputation and being what

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I am I cannot take a chance to jeopardize that. He assured me "I will never allow any harm to come to you or your family".

I said if we understand that, then I will do it. On my way to the airport with the cab waiting outside, I went inside and executed the notes on behalf of myself and Devco, and Devco was my corporation at that time, andthey were blank, and I went to the airport. I almost forgot the whole incident until June.

THE COURT: What do you mean, they were blank? THE WITNESS: The notes as far as I remember were blank.

THE COURT: What was on them, anything?

THE WITNESS: No, they were not fully filled out. he wasn't even in the office. The secretary presented the papers to me on the second desk in his office and they were all spread out and I signed them and I put the stamp on one or two pieces of paper and I went straight to Wasnington, D.C., to catch the shuttle.

THE COURT: Are these the papers you are talking about?

THE WITNESS: The form of the papers that I remember signing.

THE COURT: What was on them?

THE WITNESS: As far as I remember, nothing was written on them. I know for sure there was no interest rate and no typing in this area.

MR. DEVINE: What area is the witness indicating?

THE COURT: Up in this area the witness has

put his finger on "Pay to the order of Nori Sinoto,

12,500 and no, hundredths."

THE WITNESS: Let me state specifically, your monor, that the amount was definitely not in the note.

I have handled over thousands of notes myself in my capacity in the loan and discount department and very rarely am I unaware what is on a piece of paper.

Q Mr. Edwards, you were in the banking business for a number of years. Doesn't your background somewhat contradict this type of action?

embarrassment I mentioned earlier. I felt very emotional abut the situation. I felt that Mr. Sinoto had attempted to help another corporation which was no way involved in this at all and could not be involved with it because it was very clear that the credibility associated with the prior corporation had not only tarnished my relationship, but it is tarnishing everybody's relationnip and I resigned from it.

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Feeling very, very emotional about him, like I would my own brother, I decided to take this thing, and I dian't analyze it as thoroughly as it would have been if it was a business deal, I analyzed it on a matter of relationship, not business.

Q Did you at the time you signed those notes, did you also sign this piece of paper called Plaintiff's Exhibit 4?

A I remember signing two pieces of paper. This paper was left in his office I think about 10 or 12 sheets or more with some envelopes during the time that we had one meeting there. And yes, I do remember signing a blank piece of paper. There was nothing typed on it. That for a fact is as far as this particular piece of paper, I am sure of.

MR. DEVINE: What piece of paper is the witness looking at?

THE WITNESS: Plaintiff's Exhibit 5.

Q Did you ever dictate the wording that is on that paper?

A Not only did I not dictate the wording on this ppaer, I never dictated anything to Mr. Sinoto's office.

Q After the notes were delivered to Mr. Sinoto did you have any further discussion with him relative to the notes?

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A Yes, I did.

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Somewhere in May or June, if I remember correcetly, I was advising the State of Connecticut to discuss the solid waste problem that they have in more or less a feasibility to determine whether or not in fact the proceeds that Devco had agreed to acquire is in fact a real business and did it offer substantial potential . I had indication as I was waiting for the meeting, to call my office and after calling my office Hr. Winfree told me ne had just me with Mr. Sinoto and that his business idea or something was not going so well, and I decided to call 'Ir. Sinoto. And in my conversation I said, hey, you know, Nori, there is a problem that is still pending relating to those notes. I said when I signed them I asked you to give me a letter telling me that in no way would these notes be used in any of the financial or credit institution of this country and it was for your friend.

At this point he said well, I will get around to it because I am very busy, I have some problems. I said uont' take too long to do that because it does in fact affect my family because I own the company.

And he repeated, I will never do anything in my lift to affect your family or the corporation which you are involved with.

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Q Was any such letter ever received from Mr. Sinoto relative to the limited liability?

A No, there was not. And when I at the request of one or two of my partners when I realized in the summer that he was feeling very hurt and this was where the whole problem created --

MR. DEVINE: Objection.

A Well, whatever.

When I realized during the summer that there was a problem that was developing, this was in June or July, I went back to him and said I think it would be only fair that you give me the letter in which you promised, and he refused again at that time. I did ask him at that same time to return the note to me. That was at the Greek restaurant between 62nd and 63rd on Madison Avenue.

Q Was the execution of these notes approved by the Board of Directors of Devco?

A In theory, I guess --

MR. DEVINE: Objection.

A I could say yes because I was the board of directors.

MR. DEVINE: It doesn't call for a theoretical answer, your Honor.

THE WITNESS: I don't know how to answer it.

THE COURT: Give the best answer you can.

A The best answer I can give is the board of directors of Devco was Mr. X, but because I incorporated the company, I didn't hold an official meeting, I didn't do anything with the books other than to have them incorporated. There was no director other than myself.

The incorporator was myself. There was no board of directors, there was no chairman, no chief executives, no staff, no salary, until September, 1972.

THE COURT: At that point you were the corporation?

THE WITNESS: Yes, I was, sir. I think in August or September we formed a company and in September it started to do business.

Q What happened in September?

A In September we — in August we had completed the acquisition of Waste REclamation through the funds put together by the person that I had asked to arrange it, and we analyzed having involvement in the company at the time and everybouy's contribution to the company and made compensation. I insisted against the wishes of my investor, to compensate people even though they didn't perform. Because the concept of developing a black owned business was probably for the first time in life of magnitude being conceived.

And I wanted to make sure that it had the full support of people to go ahead. My investors comment to that was, I don't want anybody in the deal but you, and I refused to do business with him on that basis until two weeks later we signed the deal, and in August we acquired the acquisiton. I had the money put up in the first of August and in September we started.

Q What did Devco acquire?

A The assets of Waste Reclamations, which was patent pending and a plant.

Q Did Mr. Sinoto participate in any of the negotiations relative to the acquisition of Waste Reclamation . Company?

A No, Mr. Sinoto met with me and the group using his offices because I was unable to use the office of Burnett International in view of the fact that I had technically resigned from the company and I had asked to use his offices, which I agree we would compensate him for. And he said do you mind if I sit in, and I said fine, I'd love to have you sit in. And he sat in and we agreed at that tim on how the company would be structured subject to the new investor that I had arranged to come into the company.

Ino was the new investor?

A Certain-teed Products Corporation of Valley Forge,

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Pennsylvania.

Q Was Mr. Sinoto instrumental in bringing Certain-ter Products into the picture of your corporation?

A No, he was not. It was done by Mr. Robert Clampitt, which is what the whole issue is on.

MR. DEVINE: Was that comment on the record?
The COURT: I didn't hear it.

THE WITNESS: That was my comment.

Q Was anybody at any time recieving compensation for services rendered to Devco?

MR. DEVINE: Objection. Irrelevant.

THE COURT: Sustained.

Q Did there come a time when you received a call from the Franklin National Bank relative to these notes?

A Yes, there was. The call was made to me,

I think it was in September or somewhere in between August
and September, that notes were presented to the bank by

Mr. Sinoto against the account of Devco; which in fact were
being changed at the time, to be actual—and what was the
company's intent. I said No. 1, the company had no intent.

Ho. 2, the notes were procured in a fraudulent manner,
and No. 3, there was no reason or no intent—to
review it or even consider it. At that time I called a
meeting of the board of directors and informed them of

AFTERNOON SESSION

2:00 p.m.

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MR. EDELSTEIN: I would like to offer in evidence and I would like to ask the Court to take judicial notice of a certified copy of a certificate of incorporation of the defendant Devco Management.

THE COURT: Any objection to that?

MR. DEVINE: I don't think so, your Honor.

THE COURT: I take it you prefer not to have it

physically marked.

MR. EDELSTEIN: Please.

THE COURT: That will be deemed Defendants'

Exhibit -- do you have a copy of it there?

MR. EDELSTEIN: I have a photocopy.

MR. DEVINE: No objection.

MR. EDELSTEIN: No, I don't have a photocopy

of it.

THE COURT: It will be deemed Defendants' Exhibit A.

(Defendants' Exhibit A was deemed received

in evidence.)

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is entitled chief executive officer?

That is correct.

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Is there also a position at Devco Management which

1	elbr Edwards-cross 80
2	Q Is that a position superior to the position of
ż	president?
4	THE COURT: You hold that position too, don't you'
5	THE WITNESS: Yes, I do.
6	A Yes, it is.
7	Q Has it always been a superior position to that of
8	president?
9	A I think so. Yes, I believe so.
10	Q When did you assume that office?
11	A I would imagine in September of '72.
12	Q Did anyone hold that office prior to your holding
13	it?
14	A No. At least, I don't believe so.
15	THE COURT: What percentage of the stock do you
16	own at this point?
17	THE WITNESS: 42.5 per cent.
18	Q Have you ever owned less than 42.5 per cent
19	of the stock of Devco Management?
20	A No.
21	Q Have you ever owned more than that?
22	A Yes.
23	Q On a percentage basis?
24	A What do you mean by that?
25	() have you ever owned more than 52

A	I	did	own	a	nundred	per	cent.

- Q During what period of time did you own a hundred per cent?
 - A From its incorporation until the month of July.
 - Q Of 1972?
- A Correct. And I use that as an estimated date.

 I don't know the exact date.
- Whenyou signed Plaintiff's Exhibits 1 through 4 what was your understanding as to what was to be done with those notes?
- A As I stated earlier, he was using those notes with a friend of his to try and obtain capital, and I guess he conceptualized that I was lending him some money at the time.
- Q You understood that Mr. Sinoto was going to pledge your notes, is that correct?

A No, that was not the case at all. He was going to present the notes, not pledge, but I specifically said it could not be pledge, repeated to a friend of who knew nim personally and I have had friends of mine that will lend me directly, a substantial amount of money.

I say 3, 4, \$5,000, who was going to lend him money, and this friend of his was of his same nationality.

Q Did he tell you the name of that friend?

1	elbr	Edwards-cross	82			
2	A	No, he did not.				
3	Q	Did you inquire?				
4	A	I might have, I don't recall if I did. I	doubt			
5	it.					
6	Q	Did you have any conversations with that fr	riend			
7	as to what would be done with the notes?					
8	A	None whatsoever.				
9		THE COURT: Did you ever meet the friend?				
10		THE WITNESS: No, I didn't, your Monor.				
11	Q	Did you ever seek to meet him?				
12	A	No, I don't think I did, no. All my sugges	tions			
13	ware betw	een myself and Mr. Sinoto personally.				
14	Q	And you never inquired as to the name of th	is			
15	person?		ō			
16	A	I did when I found out that he was going to	use			
17	the notes	, I wanted to know who the party was and at				
18	that point he said he felt I didn't have to answer that:					
19	question.					
20	Ω	You knew all along that he was going to use				
21	these not	es with respect to his friend, is that corre	ct?			
22	A	That is correct.				
23	Q	When was it that you inquired what his fri	end's			
24	name was?					
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When he told he didn't want to return them,

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because I wanted to write a letter to his friend and tell him that the notes were not given to him for the purpose other than what was stated in our discussions.

THE COURT: I don't quite understand what that pur pose was.

THE WITNESS: It's very difficult to understand, your Honor, as I think about it myself, it's very difficult to understand. The purpose of the notes was to help him raise money. I couldn't loan him money. I couldn't loan him money; if I had the opportunity and the ability to, I would have.

So what I did, in view of the fact I didn't have money, gave him something that he could use with his friend to get cash. He was going to show them. it sounds like child's play, but that is a fact. I guess when you get emotional, you care for somebody, you do silly things. It happens in life.

lie said he wasoing to show the notes to his firend. The notes were then going to give his friend justification, if I can finish that point, to lend him money and that he himself was going to put a date on the notes which I didn't know what date or amount were on the note -- I take that back about amount, he was going to put a date on the note that would in fact be giving him

enough time, Mr. Sinoto enough time to raise the money to pay it back nimself. And we agreed that the notes could not be any more than \$12,000 because he said he needed \$12,000, and that was the amount in which I ask Mr. Mc Caughey and Mr. Buchbinder and everyone else to loan, \$12,000.

So when all that other material came out, I can't justify it because it was not discussed at all at any time until the notes were presented to Franklin National Bank did I know the denomination of the notes, the payment dates or the payee or payor.

Q Do you remember being deposed in this case?

Do you remember having your deposition taken in this case?

A Yes, sir.

Q I am going to read you a question and an answer, and I would like you to tell us whether or not you recall being asked a question and giving this answer.

"Questioned on your conversation with him", Mr. Sinoto, "on that day and any other conversations you had with prior to that day what did you expect Mr. Sinoto to do with those notes?" I am reading from page 24.

"A What did I expect him to do? When you say do, as far as giving them to me? I expected him to give them to me after he got his money, that he claimed was forthcoming and I expected him to use the notes by giving them to

The COURT. If the notes have been paid and the collateral returned, then of course it would be returned.

The WITNESS: No, the notes wouldn't be returned.

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Q Mr. Edwards, I am going to show you Plaintiff!s Exhibits 1 through 4.

THE COURT: Do you have an extra set?

MR. DEVINE: Your Honor, I have a set which was photostated with some other documents which are also in evidence, so I don't think there is any difficulty.

THE COURT: Just so I can follow what you are doing.

(Pause.)

Q Wouldyou look at those four exhibits, Hr. Edwards, and tell us what portions of those notes were blank when you signed them?

A As far as I can remember, and as I said, it was all done within a matter of three to five minutes while a cab was waiting outside, the lower portion of the notes might have been some filing, I don't recall that.

and dates and where it fills in the party who the note is made out in order of, was all blank at the time, as my memory remembers, because they were sitting like this on his secretary's desk. The secretary was the only one present in the room unless he was in another room. I was told by her that he was out of the office, and I was told by him when I spoke to him and said I would stop by on the

way to the airport, that he would not be in the office, he has a localock appointment downtown.

- Q Did you look at those notes before you signed them didn't you?
 - A Very briefly. I was on my way to Washington.
 - Q which portions of the notes did you look at?
- A I can't answer that question accurately, other than say I looked at them very briefly, and I signed them.

 If I could have answered that question, then I would be able to tell you exactly what is on it.
- Q Did you comment to anyone who was present in the office as to the condition of the notes?

A Yes, I did. I remember telling his secretary at the time that the notes were not filled in, what was the amount going to be put in there, et cetera, and she said Mr. Sinoto had run out of the office to a meeting as he stated to you, and it is unfortunate it was all not done, and it would be done and quote, copies would be sent to you.

THE COURT: Is that the young lady who was here this morning?

THE WITNESS: I didn't recognize here as being the same party unless she gained a lot of weight. Her secretary' name at that time as far I know was Carmen.

THE WITNESS: I don't remember.

Ö Waen was it that you signed that?

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If I am not mistaken it was all signed at one time, but I did not go back to Hr. Sinoto's office, as far as I can recall, from the date of signing those notes

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THE COURT: They have a Columbus Circle address.

THE WITNESS: You are correct. It is across the street from the old General Motors Building. That is the Gulf and Western Building where this office was.

- Did Mr. Sinoto have any dealings with Selma Cohen Q or with respect to Devco Management?
 - Oh, with respect to -- no, not that I know of.
 - 0 lione at all?
 - A Not that I know of.
- 0 Did you ever tell Mr. Sinoto that Selma Cohen was in charge of the account of Devco Management?

He knew that -- no, I didn't. He knew that Selma Cohen was involved with any transaction that I nad through Franklin National Bank, because she was indirectly my officer.

- Q But he didn't know that she didn't have anything to do with Devco Management, did he?
 - A That I couldn't tell you.
 - And you never told him that? 0
 - Not that I recall.
- In fact, did Devco Management have an account at Franklin National Bank?
 - Λ Yes, it did.
 - Did Hr. Sinoto know that? (1

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A I would imagine he might have heard it in conversation. I don't know whether it was told to him directly or not. All my accounts were at Franklin National Bank.

Q Did you ever tell him that Devco Management had an account at Franklin National Bank?

A I don't recall if I did or didn't. As I said, all my accounts and every one that knew me knew that all my accounts were at Franklin National Bank. Personal and corporate and otherwise.

Q Was there no difference between Devco Management and your own personal accounts?

A I don't know how you -- I don't understand the question. Of course there is a difference. Devco Hanagement is a company I formed and Deighton O. Edwards is a person. Of course there is a difference.

O What I am having difficulty with is how Mr. Sinoto would know that Devco Management had an account at Franklin National Bank simply from the fact that you had an account there.

A Because he was close enough to me in 1971 during the period of Burnett International to know exactly what I was doing at all times, okay. And so was Mr. Moore and everyone else.

9 In April of 1972 was there any money in the account

2	of Devco Management at the Franklin National Bank?
3	A I don't believe there was an account there in
4	April. The account was probably opened up in June, if I am
5	not mistaken. I am not sure.
6	Q Was there any money in the account in June?
7	A I doubt it.
8	Q Was there any money in the account in September?
9	A Yes. Very little. I don't remember the exact
10	number, but you have the records.
11	Q Prior to the date on which these notes were pre-
12	sented was there \$50,000 or more in that account at any
13	time?
14	A No, sir.
15	Q Are you sure?
16	A Yes, sir. Prior to the date of these notes,
17	is that what you asked me?
18	Q The date on which the notes were presented.
19	A On
20	Q Between April and September of 1972?
21	A Could have been. I don't remember whether the
22	money went into Franklin or into Chemical, but when we
23	sold stock in August or Septemberve did receive a check fo
24	\$50,000. It was in no way synonymous with this \$50,000.

Devco had another account, then?

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A Yes, when we initially formed a corporation we opened an account and put everything in order. In . essence the only person responsible for the account when it was at the Franklin was me because I owned the company and when we finally found the investor and put the corporation together we put the account together and the board gave approval where to establish the account and that was at Chemical Bank, not Franklin National.

Q Devco Management had an account at both places, is that right?

A That was only during the period of closing one, opening the other.

Q Did that period cover the April to September of 197period?

A What period?

Q Was the Franklin National Bank open during that period, April through September of 1972?

A I don't recall the date it was open, but the records could certainly state that. The account was closed in August or September, no later than October, if I am not mistaken.

THE COURT: Do you have all the records on this?

THE WITNESS: Yes, he has.

HR. DEVINE: I don't believe there is any disagree-

ment about that, your donor. There was substantial moneys in that account during the period.

THE COURT: When was it open? If it is relevant, tell me.

MR. DEVINE: I have been given at least some of those statements. I am not sure I can say when it was opened. But from the statement we have been given it is clear that there was more than \$50,000 in the account prior to September of 1972. I think Mr. Edelstein will stipulate to that.

Management prior to July 18th or something thereabouts was put in by me, which never totalled more than \$700 to a thousand dollars. The money that was put in Devco from July to September was put in by the investor who invested and purchased 12,000 shares and at that time the \$50,000 I believe was put in the Chemical. It might have been put in the Franklin. But that was certainly after the company was formed. Before then it wasn't even a company.

THE COURT: I don't know what the relevance is, but if there is relevance, why don't we have the exact facts instead of speculate.

MR. EDELSTEIN: I believe the statements that Mr. Devco has indicates that there was a substantial

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deposit made in the Franklin Bank some time during the summer.

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THE COURT: When?

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The WITNESS: Hust have been August. Had to be August.

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THE COURT: Let us not speculate as to when it had to be. Let us get the evidence.

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MR. DEVINE: Your Honor, the monthly statement to Devco Management from Franklin National Bank dated September 29, 1972 shows a deposit or credit of \$50,000 on the 1st of September, 1972, bringing the balance to

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\$50,007.33.

THE COURT: That I take it was the purchase of

stock?

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THE WITNESS: That is correct.

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THE COURT: I don't quite see the relevance of that fact, but at least we understand.

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MR. DEVINE: Your Honor, it was raised on direct of this witness. I just wanted to clarify the record.

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O pid you ever give Mr. Sinoto a personal financial statement of yourself?

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A Yes, I did.

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Q when did you do that?

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Q Must have been somewhere around the same time he

asked me to be a maker --

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O Same time as what?

A I will finish, please. To be a maker of the notes.

I believe I gave him a personal statement of myself and I ask
ed my account tomake up some sort of statement as to what I

felt would be Devco, you know, what was in Devco. I think
it was done on a pro formabasis. I am not positive of
that. But I did give them both because he said he wanted
to show something to his investor that he was dealing with.
I told nimat that time any man who would lend against my
statement had to be insane.

Q I think you had on direct examination that you didn't have any worth at that time, is that correct?

A No worth of any value. I have a negative net.

worth. That is correct. I said it and I say it now.

Q You said at that time that you had a negative net worth?

A That is correct.

MR. DEVCO: I ask that this one page document be marked Plaintiff's Exhibit 15, your honor, because I have premarked documents 13 and 14 which I will get to in a minute.

THE COURT: I thought the diary was marked 15.

HR. DEVINE: We didn't mark that because we

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didn't reach an agreement.

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THE COURT: Better make this 16.

(Plaintiff's Exhibit 16 was marked for

identification.)

Mr. Edwards, I show you Plaintiff's Exhibit 16 for identification and ask if that is the financial statement which you gave to Mr. Simoto.

A basically it is, but he's made some changes in it because I gave it to him on a yellow sheet of paper.

THE COURT: That piece of paper is not what you gave to him, is that what you are saying?

THE WITNESS: No, sir. This is not even my typewriter.

- Q Does that document, Plaintiff's Exhibit 16, bear your signature?
 - A It does.
 - Q Did you sign it?
 - A I must have.
 - Q When did you sign it?
 - A I can't recall.
 - Q Did youread it before you signed it?
 - A I don't recall.
- Q Do you have a practice of signing things you don't read, Ur. Edwards?

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MR. EDELSTEIN: Objection.

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THE COURT: Overruled.

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Do you or don't you?

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THE WITNESS: State the question.

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0 Do youhave a practice of signing things that you do not read?

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Λ At times. I am not a very good man for detail.

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0 Would you look at Plaintiff's Exhibit 16, please.

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A I did.

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To the best of your recollection tell us what.

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is inaccurate about that statement?

Several things. One, my loans are higher.

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No. 1, I do not have a thousand dollar cash value life

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insurance. I cannot respond to the cash in the bank

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because I have no knowledge of what it was at that time,

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and everything else seems to be fairly close. My mortgage

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is not 18,000, it is \$20,000. It is 20,000 now so it. couldn't have been 18 then. I don't know what this note is

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for \$250. Other than that, I think it is close.

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What was your net worth at the time of that financial statement?

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A Zero.

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Did you tell Mr. Sinoto that it was zero? Ö

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11 Not only did I tell nim, I explained to him when I

gave him the statement that there was no value, and when you looked at the assets minus the liabilities you got to come up with zero, and there was no way anybody in his right mind, I don't care who he was, unless he was a very, very close friend could loan against that.

Q Plaintiff's Exhibit 16 for identification shows a net worth line immediately above your signature line, doesn't it? Doesn't it show \$75,000 of your net worth?

A That is not tangible.

Q That is correct, and it was correct at that time?

A Mait a minute. You are trying to determine the accountant term for net worth. There is two accounts for net worth, regative and positive. Tangible and intangible When you talk about net worth for the borrowing it has to be tangible. So therefore you couldn't use it as any sort of collateral or guarantee. I may be idiotic in terms of signing papers but I know about lending ability.

Q The line which indicates a positive net worth of \$75,000 appears above your signature, doesn't it?

A It does not appear as a positive --

THE COURT: He ask you where it appears.

THE WITNESS: It appears that way as \$75,000 and I don't know how he came up with \$75,000.

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Q Did you see that part immediately before you signed it? Did you see that part immediately before your signature, before you signed it?

A I don't recall. I don't know whether it was signed at the same time I signed the notes or what, I don't recall.

THE COURT: May I see it.

(Pause.)

THE COURT: What is this cash in bank, \$1500, and the cash in other banks \$4500?

THE WITNESS: I don't know about the \$4500. The \$1500 is what I received from a retainer from the Bahamas, probably. It should be \$1300, not the other figure. That is the only income I had during that period.

THE COURT: What is this 4800 cash in other banks?
THE WITNESS: You got me, your honor.

THE COURT: What other banks did you have the cash in?

THE WITNESS: I did not have cash in any other banks.

- Q Ar. Edwards, during what period of time were you associated with the Franklin National Bank?
 - A 1969 to 19 -- 1967 to 1970, I believe.
 - Q Was it your correct testimony that you were not a

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loan officer?

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I was not a loan officer.

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Tell us what your duties were at different times. Q

I was in charge of putting on and taking off notes, A accruing the interest and putting the notes on, trial balances for every day at the end for the bank and making the banking reports to the controller for that branch while my first year and a half at Franklin, the other year I was in charge of urban affairs.

- Were you ever an officer of that bank?
- A Yes, I was.
- During that period of time were you an officer of 0 the bank?
- The last two years or year and a half, before I left.
- During the period of time that you were with the Franklin Mational Bank did you learn or did you know the difference between negotiable and non-negotiable notes?
 - A I certainly did.
- What kind of notes or the notes which are Plaintiff's Exhibits 1 through 4 in this case?
- You want my determination or you want the technical A determination?
 - At the time you signed those notes what did you

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believe them to be?

I believed them to be a piece of paper giving Mr. Sinoto the chance to raise some money to save his family.

Q By their terms were they negotiating or nonnegotiable?

- By their terms they were negotiable, technically.
- You understood that at the time you signed them?
- I don't think I thought about it at that time, but if you want me to say did I analyze it, no, I did not at. the time.

while you were a bank officer for Franklin Mational Bank or even before that time, did you learn what a holder in due course was?

That term, no, that I don't understand exactly. I think I know what you mean. What do you mean by that?

I am inquiring whether you learned the meaning of the term while you were --

A holder of a note during a period of time until it becomes valid, correct.

> THE COURT: Until it becomes due, dou mean? THE WITHESS: Unles it becomes due, yes.

Do you know how a holder of a note becomes a holder in due course? Do you understand that?

A . 1 understand the whole process, sir.

elbr Edwards-cross 1 You'do understand the whole process? Q 2 Yes, I do. 3 When you signed the notes which are Plaintiff's 4 Exhibits 1 through 4 did you understand that a holder 5 in due course might acquire those notes? 6 The issue never became an issue in my mind because 7 I was not signing notes thatwere ever going to be used. They were not discussed in that intent. It was discussed 9 as a piece of paper to help a man out of a problem, period. 10 And I will not allow myself to be considered or used or 11 misinterpreted in that statement, because it means a hell of 12 a lot to my personal being as well. 13 MR. DEVINE: Your Monor, I move to strike the last 14 portion of that answer as not responsive. 15 THE COURT: Yes, strike it. 16 Did you understand in April of 1972 that a Q 17 negotiagle note could be acquired by a holder in due 18 course? 19 Yes, if someone gave to him. A 20

THE COURT: Not gave it to ain.

THE WITNESS: I beg your pardon?

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THE COURT: You don't become a holder in due course by being given a note.

THE WITNESS: I am sorry; right. Yes, I did.

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Q You testified this morning, if I am not mistaken, that you expected Mr. Sinoto to deliver to you a letter of some kind?

- A Yes, I did.
- 0 What kind of a letter was that?

running out of the office, I told him I'd stop by and sign this paper for him that day that would relieve me and anything that I had done for him at this particular time from any obligation because I explicitly said to him that I did not want to affect my family or the name of anybody that was involved in what I was doing with something like that. And he said he would get me that note and he repeatedly said that in no way did he ever intend or would he ever intend to hurt me or my family, period, quote.

- Q. Are you sure what you spected was a letter to him?
- A Yes, sir.
- Q Did you ever write him a letter to that effect?
- A No, sir.
- ? You never did.
- A . I didn't have time to write anybody.
- O Are you positive that you never wrote?
- A A letter to that effect about what, returning the notes?

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To any effect, following that --

You have to be more specific. I did millions of letters. Did I write a letter asking him to return notes, no I did not.

Did you discuss with him this letter, in any way discussing or explaining the circumstances under which the motes were signed?

- After I presented the notes to the bank, I did.
- 0 doore that time?
- A No, not to my knowledge.
- Q Do you remember giving the following answers to the following questions at your deposition: Page 26:
- "Q Around the time you signed those notes did you ever demand of Mr. Sinoto he provide you with this agreement that you mentioned?
 - "A Yes. About 18 times.
 - "Q Did you demand it in writing?
- "A No, the last time I demanded it it was a phone call.
 - "() You never demanded it in writing?
- "A do, at least I don't recall -- yes, wait a Wait a minute. I believe in a letter subsequent to minute. that I referred to resolving this matter and I am hazy. I have to find it if there was a letter. I believe

in a letter subsequent to that I mentioned it to him and I correct myself the last time that I talked to him about returning those notes and giving me from Texas, if he still had them with the third party who had a Greek restaurant between 73rd Street and 74th Street or 66th Street and 67th and Madison and we had lunch.

"Q We will leave a blank in the transcript and you will identify the letter.

"A If I can find it.

"(Two blank lines.)"

This was a year ago, Mr. Edwards, and those blanks have never been filled in. Can you do that now?

A Mnoever was taking stenography has made several typos. No. 1, it wasn't the owner of a Greek restaurant. It was discussed at a Greek restaurant, as I mentioned earlier at the trial this morning, between 62nd and 33rd. The letter I think we are referring to was a letter that was written by me to the bank after which the bank notified me that the notes were presented for payment.

You signed and corrected this transcript before trial, is that correct?

A I made some notes and gave it to my attorney, yes.

I was told I could not correct onthose papers,

IR. EDELSTEIN: May I interrupt. If there is a blank in the transcript of the deposition, it is only because such letter, if it existed was unable to be located, and therefore it is not with us today. He can only give oral testimony of what value it has whether he did or didn't send such a letter.

Q You testified that there were errors in the transcription of the portion I just read, your Monor, and he signed this deposition and it was notarized by his attorney and returned to me.

THE COURT: I don't quite see what the significance of that is. The blank obviously means that he didn't find the letter.

MR. DEVINE: I don't think it necessarily means that, your monor. The blank is there and it is still blank, there is plenty of room to write yes, " "no" or "I didn't understand it."

THE COURT: He wasn't told to write yes or no.

As I remember the reading, you said if you find it,
put it in. What did you say?

MR. DEVINE: We will leave a blank in the transcript and you will identify the letter.

". If I can find it."

THE COURT: It says quite clearly that he will identify it. Not finding it, there is nothing to do.

MR. DEVINE: I was referring to the witness' statements, your Monor.

THE COURT: That is a very confusing statement.

I don't see that it has any bearing on the issue. It has nothing to do with that blank.

MR. DEVINE: Not the blank at all, your monor. The statement that is contained in the portion I read indicates a letter from Mr. Edwards to Mr. Sinoto.

And today he has testified firmly and certainly that the letter was to go the other way, that he never wrote to Mr. Sinoto.

We have premarked, your monor, two documents, two booklets, one is Plaintiff's Exhibit 13 and the other is Plaintiff's Exhibit 14, and I would now ask that they be marked on this record for identification.

(Plaintiff's Exhibits 13 and 14 were marked for identification.)

THE COURT: Are you offering them in evidence?

MR. DEVINE: I'd like to show them to the witness at this point. I would offer them if there is no objection, at this point.

HR. EDELSTETH: Subject to any relevancy, I have

	TRANSCRIPT OF TRIAL - DATED MARCH 11, 1974 Pages 13 through 14!
1	elbr Edwards-cross 136
2	As a result of Mr. Sinoto's letter to Mr.
3	Lincoln
4	A Nothing happened.
5	Q Didn't you receive a letter of March 22, 1972
6	from Mr. Jenkins of the Department of Commerce?
7	A Very possibly. I think the letter came because
8	Mr. Britain visited and he was trying to get the program
9	off the ground; the Department of Commerce.
10	Q Doesn't Mr. Jenkins refer in his letter to Mr.
11	Sinoto?
12	A I said yes.
13	Q To prior correspondence with Mr. Jenkins and Leonard
14	Garment of the Unite House?
15 .	A Yes.
16	Q All of these letters were included in this booklet
17	regarding Devco Management with your authority, is that:
18	correct?
19	A Yes, because I think the purpose of it, as I
20	remember questioning Mr. Clampitt was to establish that the
21	people involved were known to the auministration, period.
22	Q There came a time when you offered stock of
23	Devco Management to Mr. Sinoto, isn't that true?
24	A That is correct.
25	Q Unen was that?

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brothers --

On, must have been in July. Mr. Lynch of Lehman

A '72. Mr. Lynch of Lehman Brothers had put togethe the financing, working with Mr. Clampitt, and it then became time to start to think about structuring the company.

And I suggested to him the structure --

THE COURT: To whom?

Of what year?

suggested at that time that the company be structured in suc a way that the investor would have an opportunity to get a minority share of the company and still not. lose the value of a black owned company. because in most cases for the amount of money we were seeking you would normally lose control of the company and it wouldn't remain as a minority or black owned company. So we sat down and made an evaluation as to past, future — past, current and future considerations as it related to anyone in the company. And on the basis of that evaluation it was determined that the only person that could be compensated was myself, if Clampitt and Mr. Moore.

so I went back over it because I wanted to develop a company that had not only national but multi-national ramifications and potential, that the way to do it

was to involve everybody on a limited scale so that they could be able to participate in the future. And in so doing through Mr. Lynch, who is one of the major analysts on Wall Street, he said anybody that is in it or had participated in the formation of Devco Management, for the acquisition of Waste Reclamation, was to give them a nominal amount of shares. I said when you say give, do you mean give and he said no, you have to pay for it.

So I structured the company so that those people who did not have any money at that time could participate in the corporation.

And in so doing they recommended to give every-body below a certain level 5,000 shares, which was more than the company wasworth, without any question, or they were worth, as to this participation.

I insisted on several people getting more because

I felt their future contribution to be so strong. He

advised me that you can't give stock on future considerations.

So I suggested that we find a way to do it. The people

that were involved in that was Mr. Moore, Mr. Clampitt,

Mr. Lynch for finding the money and I was hoping Mr.

Sinoto could link us together with the Japanese and

I said we will keep 10,000 shares for Mr. Sinoto because

he will get 5 per cent of the Japanese American joint venture

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if Simitomi agrees to go into the project with us. Simitomi failed to agree, therefore that project was dead and all during that period of time we did not know about Simitomi's failure until almost a year later to comply with the request so therefore I allocated 10,000 shares for Mr. Sinoto and told him that a portion of the money that we needed I would be able to put off until somewhere in September, as far as payment. And he refused to accept the snares because he said, well, "I had envisioned myself with somewhere around 50,000 shares. But we also envisione ourselves as owning 80 per cent of the company. However, the investor will not allow 80 per cent ownership and it will have to be done entirely different and since we have taken a 40 per cent cut you will have to get somewhere around five or 10,000 shares. If you are not interested in that I am authorized to pay you cash for the value of those shares which is 6 cents a share." That is when we were in the

Yaımade a written offer to Ir. Sinoto, didn't you?

Greek Restaurant. All of that took place, twice, I should

I don't recall. A written offer? A

108a

I don't know if I did. I don't think so.

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You don't think you ever offered him shares in writing?

A I don't recall. I don't think so. Of Devco Management?

Q Yes.

A No, I doubt it. I might have, but I doubt it very much.

Q 10,000 shares?

A That was the offer we made, sure.

Q Class A stock?

A I don't recall. I might have.

And an option to buy Class B 15,000 shares of Class B?

A That probably was before we had structured the company because there was two classes of stock. When we formed the company there were two classes of stock, Class A and B. When we put the company together and we actually took the corporate structure and put the company together, at that time we structured who the people were, et cetera. They changed the Class A and B to just one class of stock, which is common.

Q When was it that you offered Mr. Sinoto 10,000 shares of Class A and an option on 15,000 shares of Class B?

A To quess at the time, I'd say that it must have been

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1	elbr	Edwards-cross 141
2	somewhere	
3	Q	We don't want your guess. Do you have an
4	approximat	
5	A	I can't give you an exact answer.
6	5	Can you say whether or not it was before April of
7	1972?	7 - 1-7 with third of not it was before April of
8	Λ	I would impaire it was so
9		I would imagine it was after April.
10	Q	Do you know whether it was before September of
11	1972?	
12	Λ	It would have to be before.
13	Q	It was between those two dates?
14	A	If my memory is correct
		THE COURT: Do you have the letter
15		THE WITNESS: Between April and September.
16		MR. DEVINE: I ask that this three-page document
17	be marked	as the next exhibit.
18		(Plaintiff's Exhibit 17 was marked for
19	ident	ification.)
20		THE COURT: Let us take a short break.
21	€.	(Recess.)
22	Q ·	Mr. Edwards, you have before you Plaintiff's
23		for identification. Does that refresh your
24		on as to making an offer of stock to Mr. Sinoto?
		an order of stock to Mr. Sinoto?

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110a

You said that I wrote a letter, counsel.

counselor.

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Q No, I didn't say any such thing.

THE COURT: You asked him if he did?

THE WITNESS: You asked me if I wrote a letter,

O I asked you if you had ever written --

A A letter.

THE COURT: The question is, did you write him a letter, as I remember it.

Q Question withdrawn. I will allow the record to speak for itself in that regard. I ask you whether that document refreshes your recollection as to whether you ever transmitted a written proposal to Mr. Sinoto offering him stock in Devco Management?

A Okay. The answer to that, yes, and there was no question about it.

Q Is that document which is in front of you,
Plaintiff's Exhibit 16 for identification --

A 17.

Q 17; the document which you transmitted to Mr. Sinoto.

A I transmitted this document to everybody involved with me that I felt could lend something to Devco
Management specifically.

Q That has Mr. Sinoto's name on it, doesn't it?

2	A I transmitted this document to everybody. If you
3	read it all the way through you will see it refers to every-
4	body.
5	Q But does it have Mr. Sinoto's name on it?
6	A Yes.
7	Q You transmitted that particular document to
8	dr. Sinoto, didn't you?
9	A Yes, I did.
10	Q And it is signed by you?
11	A That is correct.
12	Q It is signed in two places, isn't it?
13	A That is correct.
14	Q And those are your signatures?
15	A That is correct.
16	Q And that recites that this stock offer was being
17	made for past consideration, is that correct?
18	A No, I did not say that.
19	Q I said does this document recite that?
20	A It says past and future considerations. The
21	stock that I gave to everybody in Devco was possibly done o
22	past consideraytion, and if I didn't word it like that.
23	because the investors would not have allowed me to give
04	anybody stock bacause pobody is to be given stock directly

quoted from the president of Certain-teed and Lehman

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Mr. Edwards?

time of inception. And the only way I could give people stock, which was black people because I was trying to form a black company and other minorities was to draft a declaration like that which was in turn submitted to the investors. And that is how he got stock, that is how everyhody. They called me Santa Claus, if you want to be exact. Because I gave stock, because they told me I couldn't give it and I found a way to give it. If you want to turn that around we can sit here and talk about that, because that is not the intent. It was past and future considerations.

MR. DEVINE: I offer Plaintiff's Exhibit 17, your Honor.

THE COURT: Any objection?

MR. EDELSTEIN: May I just have a two-question voir dire?

THE COURT: Yes.

MR. EDELSTEIN: Is there a date on this,

THE COURT: It doesn't say so.

THE WITNESS: Not to my knowledge. It was done around the 1st of June we started talking with Certain-teed.

MR. EDELSTEIN: Was this resolution or this

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1	Edwards-cross 145
2	memorandum adopted by the board of directors of Devco?
3	THE WITNESS: No. There was no board, there
4	was no directors and no stockholders other than myself.
5	MR. EDELSTEIN: Are there minutes of any meeting
6	relative to the issuance of these options?
7	THE WITNESS: No.
8	MR. EDELSTLIN: I object to the admission on this.
9	THE COURT: Overruled. It is received, as far
10	as I can understand it is offered solely for the statement.
11	in consideration for past consideration, is that right?
12	HR. DEVINE: Yes, your Honor.
13	THE COURT: It is evidence on that issue, whatever
14	it may be worth.
15	(Plaintiff's Exhibit 17 was received in
16	evidence.)
17	MR. DEVINE: Your Honor, I should indicate that
18	in the question regarding that document I think I may have
19	referred to it as 16, on one or two occasions. I would
20	ask that the record be clear.
21	THE COURT: You are talking about 17?
22	IR. DEVINE: 17.
00	On the 25th of January of 1072 No. 01

On the 25th of January of 1972, Mr. Eduards, were you considering some proposal with relation to Devco?

MR. EDELSTEIN: Objection. That is somewhat.

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1	elbr 198
2	MR. EDELSTEIN: That is all.
3	No further questions. That is the defendants'
4	case, your Honor.
5	(Witness excused.)
6	THE COURT: Anymore rebuttal?
7	MR. DEVINE: Your Honor, may I have a minute or
8	two to look at some notes and make a decision on that?
9	THE COURT: We will take a short recess.
10	You let me know when you are ready.
11	(Recess.)
12	MR. DEVINE: Your Honor, I am going to recal
13	Mr. Sinoto as a rebuttal witness, very briefly.
14	NORI SINOTO, recalled.
15	DIRECT EXAMINATION
16	BY MR. DEVINE:
17	MR. DEVINE: May I have this document marked as
18	the next plaintiff's exhibit for identification.
19	(Plaintiff's Exhibit 20 was marked for
20	identification.)
21	MR.DEVINE: Your Honor, I'd like to offer this
22	document. I could ask a couple of foundation questions,
23	which I think might be advisable.
24	Q Mr. Sinoto, after court session yesterday did
25	you look in your files?

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| TRANSCRIPT OF TRIAL - DATED MARCH 11, 1974-Pages 198 through 21]

115a

A Yes.

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Q Did youhave an opportunity to review your files?

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Yes, I had the opportunity.

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Q And the document which is before you, Plaintiff's Exhibit 20 for identification, did you find that in your

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files yesterday?

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A Yes.

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Ω Will you state briefly how you recall that document coming to be in your files?

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A Around the time Mr. Edwards signed for notes

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he delivered this material to me.

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Q Had you asked him to deliver that material to

14

you?

A Yes.

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What use did you make of that material?

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A I wanted to use this as material to support

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his signing of four notes in front and on the back. And when

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I saw this I found mistake in computation, so naturally

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I corrected it only, only the mistake incomputation.

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Q Did you change the amount of any of the figures that are reflected on this document?

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A No, except this correct.

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Q I show you Plaintiff's Exhibit 16 marked for identification, I'm not sure whether it is in evidence or

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1	elbr Sinoto-direct 200
2	not, and I ask whether Plaintiff's Exhibit 16 was
ż	prepared from Plaintiff's Exhibit 20 at your instructions?
4	A Yes.
5	MR. DEVINE: I offer both of those documents,
6	your Honor.
7	THE COURT: Show them to counsel.
8	(Pause.)
9	MR. EDELSTEIN: I have no objection.
10	(Received.)
11	(Plaintiff's Exhibits 16 and 20 were received
12	in evidence.)
13	THE COURT: Plaintiff's Exhibit 20 is just the
14	same as Exhibit 16 with a computation correction?
15	THE WITNESS: Yes, sir.
16	THE COURT: Beyond that. Explain the differ-
17	ence.
18	THE WITNESS: When I saw
19	Q Mr. Sinoto, let me ask a question so that the
20	record is clear. The Xing out which appears on
21	Plaintiff's Exhibit 20, do you know how that came to be
22	on that sheet?
23	A Yes. When I saw this personal statement delivered
24	by Mr. Edwards personally, I noticed that he didn't add
25	the total figure of assets and other, on the grand total of

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1	elbr	Sinoto-direct	201
2	assets.	So I found a mistake there, so I corrected	on this
3	paper.		
4	Q	And the corrective typing, was that placed	on
5	the docum	ent Plaintiff's Exhibit 20?	
6	A	Yes.	
7	Q	At your instructions?	
8	A	Yes.	
9	Q	In your office?	
10	А	That's right. And I showed consequently t	:0
11	Mr. Edwar	ds the correction.	
12	Q	That you had made?	
13	A	Yes.	
14	Q	Did you change any other figure?	
15	A	No.	
16	Q	On Plaintiff's Exhibit 20?	
17	A	No.	
18		MR. DEVINE: That is all I have, your Hor	nor.
19		THE WITNESS: Excuse me. Only because of	f this
20	mistake i	n the total, The bottom portion, the net wo	orth
21	portion v	was also reflecting that mistake. Therefore	re,
22	I changed	that too.	
23		MR. DEVINE: No further questions, your	
24	Honor.		
25		THE COURT: What do you want this for?	

What do you want this statement for?

THE WITNESS: Mr. Edwards signed four notes and as I stated yesterday, Mr. Edwards personally wanted to also support these four notes and I asked him to give me the material to support his financial statement, and he gave methis financial statement.

THE COURT: What were you going to do with it?

THE WITNESS: I wanted to put this material together with the four notes. When I tried to obtain financial arrangement.

THE COURT: Who were you going to show it to?

THE WITNESS: I wanted to show it to my financial adviser.

THE COURT: Who is that?

THE WITNESS: Mr. Monash.

THE COURT: Who is Mr. Monash?

THE WITNESS: He has been my adviser at that time -- excuse me, he was my adviser at that time.

THE COURT: What was he going to do with this paper, Exhibits 20 and 16?

of note, what kind of material I should prepare in order to obtain financial arrangements.

THE COURT: He saw this before the notes were

119a

2 prepared?

THE WITNESS: Almost at the same time.

THE COURT: If he was going to advise you what kind of notes to prepare he must have seen it before the notes --

The WITNESS: I don't exactly recall the sequence of showing the material to him. But about the same time, according to my record, diary, May 2, 1972 we prepared, in other words, I instructed my secretary to type his personal statement. Around that time, which is exactly the time that Mr. Edwards signed notes. So naturally around that time I showed all the material to my adviser.

THE COURT: Then what did you do with it?

THE WITNESS: He told me to -- are you talking about the financial --

THE COURT: You showed them both together,
I guess?

any bank, such as Bankers Trust, which I introduced Mr.

Edwards, which also knows Mr. Edwards' development of Devco

Management, is willing to arrange a loan to me based on

these notes, it might be very good at that time. So I

naturally went to see an officer at the Bankers Trust to

whom his name was Mr. Oji, to whom I once introduced Mr.

Edwards. And right after that, Mr. Edwards and Mr. Oji

began to talk about Nigerian Gas Liquification Project,
with
to Simitoni Shoji.

Mr. Oji knew of my relationship with Simitomi Snoji as well as their intention and Mr. Edwards' interest to put Bankers Trust interest and Simitomi Shoji's interest together. At that time we were talking about development of gas liquification project in Nigeria.

Since Mr. Oji knew of these developments and discussions my adviver thought that he might be the right person to discuss about these financial arrangements.

Therefore I presented four notes together with this letter to Mr. Oji and from his desk I called Mr. Edwards and Mr. Edwards said of course, if Mr. Oji wants to do it, fine. Naturally at that time Mr. Edwards was planning to open an account at the Bankers Trust. However, that opening of account wasn't consummated when I visited Mr. Oji and got to this financial arrangement, therefore Mr. Oji requested me to wait until Devco Management opens an account with him.

So, therefore, of course, I didn't obtain the financial arrangement from the Bankers Trust at that time.

THE COURT: Why did you call Mr. Edwards from Mr. Oji's desk?

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out if it was all right with him, Mr. Edwards, to consider these notes. And I wanted to -- I think partly my request, I mentioned to Mr. Oji that I have got to call Mr. Edwards from his office, so that he, Mr. Oji, can understand the arrangement that I had with Mr. Edwards.

THE COURT: What arrangements did you have thatyou wanted to tell Mr. Oji?

THE WITNESS: Exactly as I have testified yesterday, that using these four notes as collateral to obtain financial arrangements.

THE COURT: I don't remember just where you told me that you didn't present these notes to the bank as they fell due?

I said yesterday, that Mr. Edwards was trying to explain to me that the moment financial arrangement of Devco Management is arranged, announced with Certain-teed products, then he sis going to honor or either give me 50 per cent of the company or make a financial arrangement above and beyond \$50,000. Based on that understanding I have been waiting until he tells me that either he will give me a true amount, total amount, or you will let me present these four notes to the bank, and the moment, at the end of

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June, 1972, the moment he told me that he cannot and he is not going to give me that amount of shares of the company and he is not going to pay and he said almost very bluntly that take it or leave it, I immediately understood it was a breach of my contract and agreement or understanding with him. Therefore, I waited whether he will proceed to make any good in correcting his statement. I waited until I think September of 1972 to present four notes to my bank.

THE COURT: In other words, at the time you took these notes you knew he didn't have any money in the corporation to pay, is that right?

been saying to me that though Devco didn't receive money and he personally is trying to arrange a financial arrangement, it may take a little more time. He said possibly, and he repeated to me that Bankers Trust will quite possibly take Devco shares in order to either give me a cash payment or \$50,000 or make some arrangement so that I eventually will obtain more than \$50,000 of funds from Mr. Edwards.

THE COURT: When you pledges these notes with the Bankers Trust you didn't tell them that the company had no reason, is that right?

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THE WITNESS: No, I told the whole story, as I just explained to you. Mr. Oji of course was very much interested in the future of Davco project and he believed it that in the very near future Davco will be able to obtain enough funds to develop its project.

TEH COURT: Was it your understanding with

Mr. Edwards that you would not present these notes without
talking to him about it?

this matter and he said he is going to arrange for the cash payment sooner or later, but meantime, he said, he can give me these four notes to use it as a collateral to obtain a financial arrangement from anyone, including the bank. And we have been quite repeatedly talking about that matter, arrangement, and in the event that he breaches -- of course at that time we didn't use that kind of word --

THE COURT: He had no intention of breaching?

THE WITNESS: So, th refore, naturally as a banker
he knew that in case he cannot of course meet that amount
when maturity dates of four notes come, that he must meet
with these demands.

THE COURT: Your main hope is that you wouldn't cash these notes but that you'd get an interest in the

company?

As I mentioned also yesterday, that since the beginning of my discussions with Mr. Edwards to help him to be a major driving force among minority groups businessmen, see that he can eventually establish a major industry for minority group was my exact project that I have been working with Mr. Edwards.

And again, from time to time he used a different name. He talked about Northern Recycling Corporation.

He talked about Waste Reclamation Corporation. He talked about Devco Investment and then Devco Management.

But as far as I am concerned, and that is another reason why I requested him mot to use my name so freely in his representations, because my interestwas to personally assist him to be a businessman, to develop major industry for minority groups. I had no doubt that he would be able to accomplish that by developing Devco Management.

THE COURT: How did you happen to pick the sum of \$50,000?

about his need. At that time we talked about the beginning of April or end of March of 1972, we talked about how much amount of money that he may need and I may need.

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He talked about possibly \$60,000. So I said I need about \$50,000.

THE COURT: You needed \$50,000?

THE WITNESS: Yes. Not necessarily need, but I believed that 1-needed \$50,000 based on my time spent, et cetera, is appropriate. Because he said he considers his contribution, based on his contribution he believes ne can obtain the \$60,000. So therefore I said I rather liked to obtain \$50,000.

THE COURT: But your main objective was a percentage of the business?

THE WITNESS: Yes. In which I believed, at that time, that the moment after he received a million dollars worth of commitment from Certain-teed Products it was a valuable asset.

THE COURT: Thank you.

MR. EDELSTEIN: No questions.

(Witness excused.)

MR. DEVINE: No further questions, your Monor.

That concludes rebuttal, your Honor, except I would like to offer a portion of Mr. Edwards' deposition as rebuttal testimony. The section that I would like to offer is from page 37 line 6 through page 42 line 12.

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THE COURT: Do you want to read it?

MR. DEVINE: It is lengthy. I can do that.

I would mark the whole deposition if you prefer and offer only that portion.

THE COURT: Mark the deposition.

MR. EDELSTEIN: Yes, that is a lot easier.

THE COURT: I will read it.

(Plaintiff's Exhibit 21 was received in evidence.)

MR. DEVINE: There is some discussion in that section of documents marked 10, 10-A and 11. Those documents are in evidence as 13 and 14 in this case, your Honor.

THE COURT: Just tell me what the gist of this is.

MR. DEVINE: This has to do with this booklet which is in two parts, Plaintiff's Exhibit 13 and 14 in evidence. I feel that this portion of the deposition is contradictory to the testimony which Mr. Edwards gave yesterday on this subject and I would like to have the contradiction part of the record.

THE COURT: This has to do exclusively with these two books?

MR. DEVINE: Yes, sir.

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MR. EDELSTEIN: I have no objection, except that Mr. Edwards completely expanded upon whatever statements he makes in here.

THE COURT: That is for sure.

MR. DEVINE: That concludes the plaintiff's case.

THE COURT: Do you want to make some argument.

or what?

MR. DEVINE: Your Honor, I would follow the Court's suggestion as to whether we make some closing argument at this time or whether we submit post trial papers. I am really neutral as to what is best under the circumstances.

THE COURT: Why don't you submit post trial papers and why don't I just give you my present view as to how I see the issues, not by way of decision.

ation is very material. Obviously this plaintiff did some work for the group of people that ultimately emerged as Davco. And if the corporation — and the corporation got: some benefit from it or could be deemed or could have thought it had benefit from it. And therefore if the corporation wanted to issue an — to pay for that benefit, I don't see that consideration is much in issue.

I accept Mr. McNally's testimony and therefore

PLAINDEF'S EXHIBIT

138-20 175th Street Home Appress Springfield Cardens, N.Y. SEP 1 2 1972

	, <u>, , , , , , , , , , , , , , , , , , </u>
This is note No. 2 of a strict of 4 notes. Upon default in the payment of any one of their corts of any other note of any offer and or demand. The makers, endorsest and susrantors of this note hereby waive presentanent for payment, demand, notice of non-payment and dishonor, protest, and notice of the makers, endorsest and susrantors of this note hereby waive presentanent for payment, demand, notice of non-payment and dishonor, protest, and notice of the notice of the indebtedness for which it is given not given on the notice of the consent that no such renewals, extensions or partial payments stall discharge any parties thereto from liability hereon in whole or in part. If a pertition under any position of the Bankruppt's Act or any other in payments stall discharge any parties thereon in whole or in part. If a pertition under any position of the Bankruppt's Act or any other incolorable payments stall discharge any provision of the Bankruppt's Act or any other or payment and parties payments stall discharge any provision of the Bankruppt's Act or any other or can pay the payment stall discharge any provision of the Bankruppt's Act or any other or payment and payment stall discharge any provision of the Bankruppt's Act or any other or payment and payment stall discharge any provision of the Bankruppt's Act or any other or payment and payment stall discharge any provision of the Bankruppt's Act or any other or payment and payment stall discharge any payment stall discharge any provision of the Bankruppt's Act or any other or payment and payment stall discharge any provision of the Bankruppt's Act or any other or payment and reasonable and when due and if it be placed with an attendance or guarantor of the anomal of the same and it is be placed with an attendance or guarantor of this note, which is thereby agreed to be just and reasonable and when due and the maker this note, and reasonable and when due and the maker this note, and reasonable and when due and the maker this note, and reasonable and the payment a	\$12.500.00 DOUANS CIV CENTS April 26, 1977- \$12.500.00 We promise to pay to sixty-five days the order of Nori Sinoto Twelve thousand five hundred and no/100 Twelve thousand five hundred and no/100 Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

138-20 175th Street Home Appress Springfield Gardens,

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Due July 20, 1972	This is note No. 3 of a series of 4 mores, Upon default in the payment of any one of their notes or any other note or no. 1 of the maker and/or guarantors hereof, held or acquired by hold or hereof all of the aforesaid notes shall immediately become due and payable without prior notice or the makers, endorsers and guarantors of this note hereby waive present, demand, notice of non-payment and dishonor, proceeding atting on, out of, under or by reason of this note; consent to any renewals, extensions and payable, hereto from liability hereon in whole or in part. If a petition under any provision of the Bankupity Act or any other novolvency situate for any relief interests and hereof shall become immediately due and payable. If this note to not paid if other extensions of every kind of each maker or endorser hereof to not payable, if this note that not is not and if it be plicted with an automety for collection, the maker, makers, endorses and ball be added to the amount of this note being and recoverable with an automety for collection, and endorser to guarantor of this note to help a the same to the holder thereof at maturity and thereafter shall place the tame with an automety for collection, and endorser or guarantor of this note to pay to the same of the holder thereof at maturity and thereafter shall place the tame with an automety for collection against the maker, makers, payable at the rate of two per cent per month.	the order of Nori Sinoto Twelve thousand five hundred and no/100 Payable at Franklin National Bank 15	\$12,500.00
Milled of the Man	by hold t hered all of the aforesaid notes shall immed on, out of, under or by reason of this note; consent on, out of, under or by reason of this note; consent on, out of, and consent that no "uch renewal, cremen ander any provision of the Bankrupity Act or any other with note and all other existing obligations of every kin to not paid when due and if the pliced with an attorney fee of 30% of the amount of this note, which is not with the amount of the under this note. If any endous the time the tame with an attorney for collection against the all costs of collection, including an attorney's fee of 300 little and recoverable with the amount on this note. Inter and recoverable with the amount on this note. Inter	no/100 15 Columbus Circle, New York	A Savinca
Chief Executive Office	these notes or any other note or no of the maker finitely become due and payable without prior notice of non-payment and dishonor, protest, and notice of to any renewals, extensions and partial parments of sions or partial payments shall discharge any party since for any relief interest of the challenges of each maker or endoarse terror to the holder ley for collection, the maker, maken, endorses and which to reparamor of this note shall pay the amount of the party agreed to be just and resource of the notes that pay the amount of the maker, makers, paid endosters, paramora or any fer maker, makers, prior endosters, paramora or any fer maker, makers, prior endosters, paramora or any fer maker, makers, prior endosters, paramora or any fer makers, makers, prior endosters, paramora or any fer makers.	promise to pay t	April 75, 1972

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DEVCO MANAGEMENT INC.

April 26, 1972

Nori Sinoto 8 East 62nd Street New York, NY 10021

Dear Mr. Sinoto:

We are forwarding herewith four promissory notes, listed below, in consideration of your services rendered as executive advisor to Devco Management Inc.

No.	Dated	Amount	Due Date
1	April 26, 1972	\$12,500.00	June 12, 1972
2	April 26, 1972	\$12,500.00	June 30, 1972
3	April 26, 1972	\$12,500.00	July 20, 1972
4	April 26, 1972	\$12,500.00	August 9, 1972

For your information, Mrs. Selma Cohen is in charge of our account at Franklin National Bank.

Very truly yours,

Deighton O. Edwards, Jr. Chief Executive Officer

Enclosures



PLAINTIFF'S EXHIBIT 16-PERSONAL STATEMENT OF DEIGHTON O. EDWARDS, JR., AS OF February, 1972

PERSONAL STATEMENT OF DEIGHTON O. EDWARDS, JR. As of February, 1972

ASSETS

Cash on hand and in Bank Cash in other Banks	\$ 1,500.00 4,800.00	
Accounts Receivable	27,000.00 \$33,300.00	
Other		
Automobiles (2) Life Insurance (Cash Value) Real Estate (Appraised)	\$ 1,500.00 1,000.00 28,000.00	
Other Securities (Registered &		

\$112,800.00

LIABILITIES

Accounts Payable

Bank Loans	\$ 4,500.00
Bank Loans (Due 180 days)	1,500.00
Others (Due 180 days)	13,000.00
Note	250.00
	\$19,250.00

Non-registered)

Other

Mortgages	\$18,000.00
Net Worth	75,550.00
	593,550,00

\$112,800.00

The above statement represents my personal financial condition.

Signed Weighton U. Edwards, Jr.

49,000.00 \$79,500.00

138a

UNITED STATES DISTRICT COURT SCUTATED DISTRICT OF NEW YORK

MORI SIMOTO,

Plaintiff,

- against -

DEVEC MANEGEMENT, INC. and DEIGHTON O. EDWARDS, JR.,

Defendants

APPEARANCES:

BUTCHSKY, SCENETKE & DEVINE Attorneys for Plaintiff 230 Park Avenue New York, New York 10017 By: LICINES C. DEVINE,

Of Counsel

MARVIN I. EDELSTEIN Attorney for Defendants 55 Liberty Street New York, New York 10005 #41045

OPINION 73 Civ. 25

MICCOFILM

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

NORI SINOTO,

Plaintiff,

73 Civ. 25 (W.K.)

JUDGMENT

-against-

DEIGHTON O. ELWARDS, JR.,

Defendants.



This action came on for trial before the Court on March 11th and March 12, 1974, Hon. Whitman Knapp, District Judge presiding, and the issues having been duly tried, and a decision having been duly rendered, it is

ORDERED, ADJUDGED and DECREED, that the complaint herein be and the same hereby is dismissed on the merits and that costs be awarded to the defendants.

Dated: New York, New York September 9th 1974

Clerk of the Court Burghart

This case is peculiarly sui generis. The testimony of the parties is anything but clear. Relying almost exclusively upon plaintiff's testimony, I find the following to be the factual situation. Plaintiff, who held himself out as a business advisor skilled in the creation of new enterprises, was in the habit of working on a contingent basis, looking for his compensation to consership of equity in enterprises he was instrumental in creating. He had an arrangement with defendant Edwards whereby he would recaive 50% of a corporation to be organized for the conduct of a business jointly fathered by plaintiff and Edwards. At some point, plaintiff being in need of funds, it was agreed that Edwards would issue some \$50,000 in notes (here sued on) which could be used as collateral to assist plaintiff in obtaining temporary financing from others. It was understood, however, that plaintiff would not present or display the notes to anyone without defendant Edwards' specific permission. The notes - with such permission - were so displayed on at least one occasion but did not have the desired result. Some time later, when it became apparent that there never would be a business of which plaintiff couls have 50%, he presented the notes for payment. Defendent Edwards, asserting various - mostly irrelevant - defenses, declined to honor them.

these notes could be used as a means of raising cash. Had they been so used, the rights of third parties would have intervened, and the situation would have been entirely different. However, although I can come to no firm conviction as to what the parties did intend, it seems to me clear beyond peradventure that they did not intend to convert plaintiff's anticipated 50% equity position into a \$50,000 debt and that neither party considered these documents to be notes in any conventional sense. The rights of no third parties having intervened, I see no reson why the original intention of the parties should not be given effect.

In brief the plaintiff, following his customary course, conducted his dealings with the defendant Edwards in the hope of obtaining a 50% ownership in a successful enterprise. Success did not eventuate, and plaintiff had nothing to show for his efforts It follows that judgment should enter dismissing the complaint.

SO CEDERED.

Dated: Hew York, Hew York July 31, 1974.

THE PARTY IS NO. 10.05.5.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MORI SINOTO,

Plaintiff, ::

73 Civ. 25 WK

-against-

NOTICE OF APPEAL

DEVCO MANAGEMENT, INC. and DEIGHTON O. EDWARDS, JR.,

Defendants.

NOTICE is hereby given that Nori Sinoto, plaintiff above named, hereby appeals to the United States Court of Appeal for the Second Circuit from the order of Hon. Whitman Knapp filed August 1, 1974, ordering judgment dismissing the complaint and from the judgment entered in accordance therewith.

:

Dated: New York, New York August 30, 1974

BUTOWSKY, SCHWENKE & DEVINE

A member of the firm

Attorneys for plaintiff

230 Park Avenue

New York, New York 10017 (212) 725-5360

(222) 723-336

TO: CLERK OF UNITED STATES DISTRICT COURT FOR SOUTHERN DISTRICT OF NEW YORK 40 Foley Square New York, New York 10007

MARVIN I. EDELSTEIN, ESQ. 55 Liberty Street New York, N. Y. 10005



SERVICE OF / COPIES OF THE WITHIN
appendix.
IS HEREBY ADMITTED.
DATED: .12/31/74
Marin Edelstein
Attorney for Day
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